Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
AT&T Corp.,	)	
	)	
Complainant,	)	Proceeding No. 17-56
	)	Bureau ID No. EB-17-MD-001
v.	)	
	)	
Iowa Network Services, Inc., d/b/a Aureon Network Services,	)	
	)	
Defendant.	)	

OPPOSITION TO
PETITION FOR FURTHER RECONSIDERATION

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Dated: September 10, 2018

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Pursuant to 47 C.F.R. § 1.106(g), Iowa Network Services, Inc., d/b/a Aureon Network Services ("Aureon") hereby submits this opposition to the Petition for Further Reconsideration ("Petition") filed by AT&T Corp. ("AT&T"). AT&T's Petition is meritless and should be denied.

INTRODUCTION AND SUMMARY

AT&T's Petition accuses the Commission of a multiplicity of wrongdoing. AT&T accused the Commission of the following misconduct: "abdicating its duty,"[1] "denied AT&T,"[2] "deprives AT&T,"[3] "violated Section 206,"[4] "lacked authority,"[5] "unlawful and erroneous,"[6] "arbitrary,"[7] and "unreasonable."[8] AT&T's accusations are unjustified and meritless.

[1] AT&T Petition at 11.
[2] *Id.* at n.27.
[3] *Id.* at 24
[4] *Id.* at 8, 13.
[5] *Id.* at 13, 17.
[6] *Id.* at 13, 16.
[7] *Id.* at 14, 18-23.
[8] *Id.* at 23.

AT&T's Petition asks the Commission to adopt the fiction that no Aureon tariff rate was on file with the Commission, when, as the Commission properly determined, Aureon's 2012 tariff rate remained effective between July 3, 2012 and February 28, 2018 when the 2013 tariff rate was voided *ab initio*. In addition to being wrong on the merits, AT&T's Petition is procedurally defective in violation of Section 1.106(p) of the Commission's rules because it repeats arguments already rejected by the Commission or makes new arguments that AT&T had a full and fair opportunity to previously present to the Commission in this case. Furthermore, as AT&T's counterclaims failed to include a violation of the CLEC benchmark rate in either 2012 or 2013, those allegations in AT&T's Petition are barred by the two year statute of limitations in 47 U.S.C. § 415(c).

ARGUMENT

I. AT&T's Petition Fails to Meet the Commission's Procedural Requirements for Reconsideration.

AT&T's Petition relies upon arguments that AT&T previously made in this proceeding that have already been rejected by the Commission.[9] For example, AT&T reasserts its contention that "once the Commission later decides the applicable benchmark, then if the 2012 rate exceeds that benchmark, that rate cannot be the currently effective rate."[10] AT&T also repeats its allegations made previously that Aureon's 2012 tariff rate cannot be the effective rate because AT&T wants the Commission to assume that Aureon would have revised its rates in 2014 pursuant to Section 69.3 and alleges that the 2012 rate does not reflect Aureon's cost of

[9] Opposition of AT&T Corp. to Aureon's Petition for Reconsideration at 8-9, Proceeding Number 17-56, File No. EB-17-MD-001 (filed Dec. 18, 2017) ("AT&T Opposition"); *In the Matter of AT&T Corp. v. Iowa Network Services, Inc. d/b/a Aureon Network Services*, slip op. at ¶¶ 16-18, FCC 18-116, Proceeding Number 17-56, File No. EB-17-MD-001 (Aug. 1, 2018) ("*Reconsideration Order*").
[10] AT&T Opposition at n. 11; AT&T Petition at 3, 11-19.

service.[11] The Commission properly rejected these arguments and concluded that "We are unpersuaded by AT&T's arguments that the 2012 tariff cannot be the 'currently effective tariff rate.'"[12]

AT&T's arguments are precluded by 47 C.F.R. § 1.106(p)(3). It is "settled Commission policy that petitions for reconsideration are not to be used for the mere reargument of points previously advanced and rejected. Reconsideration will not be granted merely for the purpose of again debating matters on which the Commission has already deliberated and decided"[13] Furthermore, to the extent that AT&T claims that its Petition relies upon arguments that have not previously been presented to the Commission, such arguments are prohibited by 47 C.F.R. § 1.106(p)(2) because AT&T had a full and fair opportunity to previously present those arguments when it opposed Aureon's petition for reconsideration. For these reasons, AT&T's Petition should be dismissed as procedurally defective.

II. The Claims in AT&T's Petition Regarding Aureon's 2012 Tariff Rate are Barred by the Two Year Statute of Limitations.

The two year statute of limitations in Section 415(c) applies to the claims in AT&T's Petition challenging the lawfulness of Aureon's 2012 tariff rate.[14] Section 415(c) states:

> For recovery of overcharges action at law shall be begun or complaint filed with the Commission against carriers within two years from the time the cause of action accrues, and not after.

The Commission has construed Section 415 strictly. "That 'statute of limitations is a statute of repose, designed to protect a potential defendant against stale and vexatious claims by ending the possibility of litigation after a reasonable period of time has elapsed.' Consequently, '[s]ection

[11] AT&T Petition at 3, 11, 13-14, 19-24.
[12] *Reconsideration Order* at ¶ 18.
[13] *In the Matter of S&L Teen Hospital Shuttle*, 17 FCC Rcd 7899, 7900 ¶ 3 (2002).
[14] 47 U.S.C. § 415(c).

415 ... must be applied even if to do so produces hardships.'" *In the Matter of Operator Communications, Inc. v. Contel of the South, Inc*., 20 FCC Rcd. 19783, 19787 ¶ 10 (2005) (citations omitted). Moreover, the Commission has made it clear that "[t]o promote fairness and finality, a party seeking from the Commission the serious remedy of a monetary damages award against a particular common carrier must do so in strict accordance with the requirements of the Act and our rules." *Id*. at 19784 ¶ 1.

This proceeding is a primary jurisdiction referral from the New Jersey federal district court. Aureon filed its initial complaint with the New Jersey federal district court on May 30, 2014. AT&T filed its counterclaims with the court on August 4, 2014. AT&T did not file its complaint with the Commission in this proceeding until June 8, 2017.

AT&T's Counterclaims alleged that Aureon's 2013 tariff rate violated the rate cap of $0.00819.[15] However, AT&T's Counterclaims did not include any claims alleging that Aureon's 2012 tariff rate was unlawful. Furthermore, AT&T's Counterclaims did not include any claims that Aureon's tariff filings in either 2012 or 2013 violated the CLEC benchmark rate. Nowhere do AT&T's Counterclaims mention the CLEC benchmark rate or a violation of 47 C.F.R. § 61.26, which established the CLEC benchmark rate in the year 2001. While AT&T's Counterclaims include detailed quotes of other Commission rules, AT&T's Counterclaims do not mention 47 C.F.R. § 61.26 or 47 C.F.R. § 51.911(c), which cross-references Section 61.26. As the Commission established the CLEC rate benchmark in 2001,[16] AT&T had ample opportunity

[15] Defendant's Answer and Counterclaims at ¶¶ 58-80, Civil Action No. 14-3439 (D. N.J. filed Aug. 4, 2014) ("AT&T's Counterclaims"). For the Commission's convenience, AT&T's Counterclaims are attached as Exhibit A.
[16] *In the Matter of Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, 9938 ¶ 16 (2001) ("*Seventh Report and Order*") ("establishing a benchmark level at which CLEC access rates will be conclusively presumed to be just and reasonable").

to assert a violation of the CLEC benchmark rate prior to the running of the two year statute of limitations.

Aureon's 2012 tariff rate was filed on June 26, 2012 with an effective date of July 3, 2012.[17] That tariff filing was made pursuant to the "deemed lawful" procedures set forth in Section 204(a)(3).[18] In construing Section 415(c), it has been the Commission's "long held view that 'a cause of action accrues at the time the carrier does the unlawful act.'" *Comm.Vending Corp. v. FCC*, 365 F.3d 1064, 1073 (D.C. Cir. 2004) (citation omitted). The unlawful act asserted in AT&T's Petition is that Aureon filed a tariff rate on June 26, 2012 that allegedly exceeded a cost-of-service rate and exceeded the CLEC benchmark rate.[19] The two year statute of limitations accrued no later than July 3, 2012, the effective date of Aureon's tariff rate, and expired two years later. Consequently, all claims that Aureon's 2012 tariff rate did not become the lawful rate on July 3, 2012 by operation of Section 204(a)(3) lapsed altogether no later than July 3, 2014. AT&T's Counterclaims were filed after July 3, 2014. Furthermore, those Counterclaims neither alleged a violation of the CLEC benchmark rate nor asserted any claim challenging the just and reasonableness or "deemed lawful" status of the 2012 tariff rate. Therefore, AT&T's Petition, which solely focuses upon alleged violations of the CLEC benchmark rate and claims challenging the lawfulness of Aureon's 2012 tariff rate, must be dismissed as time-barred by the two year statute of limitations in Section 415(c).

III. The Commission Properly Applied Section 204(a)(3) to Aureon's 2012 Tariff Rate.

AT&T's Petition alleges that Aureon's 2012 tariff rate did not remain deemed lawful under Section 204(a)(3) of the Communications Act[20] because AT&T contends that the 2012 rate

[17] Iowa Network Access Division, Tariff F.C.C. No. 1, 11th Revised Page 145, § 6.8.1(A).
[18] 47 U.S.C. § 204(a)(3).
[19] AT&T's Petition at 3-4, 11, 13-15, 17, 19-25.
[20] 47 U.S.C. § 204(a)(3).

exceeded a cost-of-service rate and the CLEC benchmark rate established in the year 2001.[21] AT&T's Petition ignores the plain words of Section 204(a)(3) and should be denied. The Commission correctly determined that Aureon's 2012 tariff rate was deemed lawful under Section 204(a)(3) and remained the effective tariff rate until that rate was revised prospectively, as ordered by the Commission, on March 1, 2018.[22] AT&T also wrongfully accused the Commission of "abdicating its duty under Section 206."[23] During the damages phase of this case, AT&T will have a full and fair opportunity to demonstrate whether AT&T is entitled to damages under Section 206 for any payments made by AT&T in excess of the $0.00623 deemed lawful rate.[24]

Section 204(a)(3) provides:

> A local exchange carrier may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Any such charge, classification, regulation, or practice shall be deemed lawful and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action under paragraph (1) before the end of that 7-day or 15-day period, as is appropriate.

Aureon reduced its tariff rate by 24% from $0.00819 to $0.00623 with an issue date of June 26, 2012 and an effective date 7 days later of July 3, 2012.[25] During the seven day statutory period, the Commission did not initiate a Section 204(a)(1) hearing concerning the lawfulness of the tariff rate reduction. The Commission neither investigated nor suspended the tariff rate. Because the FCC did not suspend the effective date of the tariff filing, the tariff rate reduction became effective July 3, 2012.[26] Therefore, the Commission correctly ruled: "The FCC did not

[21] See e.g. AT&T Petition at 3-4.
[22] *Reconsideration Order* at ¶¶ 17-18.
[23] AT&T Petition at 11.
[24] The Commission also clearly stated that "the Commission will address in the damages phase of this case alleged improprieties in Aureon's 2012 tariff rate." *Reconsideration Order* at n. 58.
[25] Iowa Network Access Division, Tariff F.C.C. No. 1, 11th Revised Page 145, § 6.8.1(A).
[26] 47 U.S.C. § 204(a)(3) (stating that tariff rates "shall be effective . . . unless the Commission takes action").

suspend the tariff. Nor did AT&T or any other carrier challenge Aureon's 2012 tariff filing; accordingly, it was 'deemed lawful.'" *Reconsideration Order* at ¶¶ 17-18.

While AT&T admits that Aureon's 2012 tariff rate became effective and was deemed lawful, AT&T erroneously contends that on July 1, 2013 "Aureon withdrew the 2012 rate."[27] As the Commission correctly decided, Aureon's 2012 tariff rate was not withdrawn, canceled, or superseded on July 1, 2013. "Aureon's 2013 tariff is void *ab initio* and therefore never went into effect. Because the 2013 tariff did not cancel or supersede Aureon's 2012 tariff, the 2012 tariff retained its legal status."[28] Furthermore, "Aureon's 2012 tariff did not expire by its own terms and it remains in effect until it is amended or cancelled." [29] Therefore, because the 2013 rate was voided *ab initio,* Aureon's 2012 tariff rate of $0.00623 remained effective and deemed lawful from July 3, 2012 until it was replaced by a tariff amendment on March 1, 2018. Contrary to AT&T's arguments, Aureon did have a valid tariff rate on file with the Commission between July 1, 2013 and February 28, 2018.

After a tariff rate has become effective and deemed lawful under Section 204(a)(3), it is no longer just a "legal rate", but becomes a "lawful" rate with the force and effect of a statute, and such a lawful rate cannot be retroactively vacated or modified. When Congress enacted Section 204(a)(3), the Commission held that "a streamlined tariff that takes effect without prior suspension or investigation is conclusively presumed to be reasonable and, thus, a lawful tariff during the period that the tariff remains in effect."[30] Furthermore, the D.C. Circuit has held that a tariff rate that is deemed lawful is *per se* reasonable and a just and reasonable rate. *Virgin*

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[27] AT&T Petition at 14, 21 ("As to Section 204(a)(3)…the deemed lawful doctrine may protect Aureon from refunds prior to July 1, 2013").
[28] *Reconsideration Order* at ¶ 17.
[29] *Id.* at ¶ 18.
[30] *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, Report and Order, 12 FCC Rcd. 2170, 2182, ¶ 19 (1997) ("*Streamlined Tariff Order*").

Islands Tel. Corp. v. FCC, 444 F.3d 666, 669 (D.C. Cir. 2006); *ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403, 411-13 (D.C. Cir. 2002). Therefore, while the $0.00623 deemed lawful rate was effective between July 3, 2012 and February 28, 2018, the $0.00623 tariff rate was the *per se* just and reasonable rate.

A tariff rate made lawful by Section 204(a)(3) cannot be retroactively invalidated.[31] Being lawful, $0.00623 cannot be unlawful, as AT&T alleges.[32] When it was on file with the Commission and effective between July 3, 2012 and February 28, 2018, the $0.00623 tariff rate was *per se* just and reasonable. Therefore, contrary to AT&T's accusations of Commission misconduct, the Commission properly determined that the $0.00623 rate remained effective and deemed lawful as a consequence of voiding *ab initio* the 2013 tariff rate.

CONCLUSION

Wherefore, for the foregoing reasons, the Commission should deny AT&T's Petition for Further Reconsideration.

Respectfully submitted,

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Dated: September 10, 2018

[31] *V.I. Telco*, 444 F.3d at 669.

[32] Retroactively applying the off-tariff, fictional rate sought by AT&T in lieu of the deemed lawful rate that was effective and on file with the Commission is "impermissible as a form of retroactive ratemaking." *ACS of Anchorage*, 290 F.3d at 411.

CERTIFICATE OF SERVICE

I, Monica Gibson-Moore, do hereby certify that on this 10th day of September 2018, copies of the foregoing Opposition to Petition for Further Reconsideration of Iowa Network Services, Inc. d/b/a Aureon Network Services were sent to the following:

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EXHIBIT A

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IOWA NETWORK SERVICES, INC., an Iowa corporation, Plaintiff, v. AT&T CORP., Defendant.	:	Civil Action No. 14-3439 (JAP-LHG)

DEFENDANT'S ANSWER AND COUNTERCLAIMS

Defendant AT&T Corp. ("AT&T") respectfully submits this Answer and Counterclaims to the Complaint brought by Plaintiff Iowa Network Services, Inc. ("INS" or "Plaintiff").

ANSWER[1]

1. Plaintiff Iowa Network Services, Inc. ("INS"), by its attorneys, brings this Complaint against Defendant AT&T Corp. ("AT&T" or "Defendant") and alleges as follows:

RESPONSE: AT&T admits that INS is bringing a complaint against AT&T. AT&T denies the remaining allegations in this paragraph.

[1] AT&T restates the allegations of the Complaint for the convenience of the parties, but by doing so does not adopt or acknowledge the validity of those allegations except as specifically set forth herein.

2. INS brings this action against AT&T to recover on an account for the Centralized Equal Access ("CEA") service that INS has provided and billed to AT&T, but for which AT&T has not fully compensated INS.

RESPONSE: AT&T admits that INS has instituted this action to collect payments for a service generally known as "switched access service." AT&T further admits that the service INS purports to provide and to bill to AT&T may also sometimes be described as "Centralized Equal Access Service ("CEA"), which can consist of various elements including access tandem switching, switched transport, and signaling. AT&T avers that CEA service is a regulated switched access service, and that providers of such service are Local Exchange Carriers ("LECs"), subject to the FCC's rules, including those set forth in *Connect America Fund*, 26 FCC Rcd. 17663 (2011). AT&T denies the remaining allegations in this paragraph.

3. The statement of account is attached as Exhibit A.

RESPONSE: AT&T admits that Exhibit A to the Complaint purports to be a statement of account showing dollar amounts AT&T owes to INS; however, AT&T denies that AT&T owes INS any moneys and, as described below, AT&T is in fact entitled to refunds, damages, and other relief from INS.

4. The statement of account attached as Exhibit A is accurate. The amounts that were billed by INS and the amounts that have not been paid by AT&T are accurately set forth in the statement of account.

RESPONSE: AT&T admits that it made certain payments to INS and withheld certain other payments; the withheld payments, and some of the payments it made, were unlawfully billed under the tariffs and/or the Federal Communications Commission's ("FCC") rules. AT&T denies that the statement of account attached to the Complaint as Exhibit A is accurate and also denies the remaining allegations in this paragraph.

5. This Court has jurisdiction over this action pursuant to: (a) 28 U.S.C. §§ 1331 and 1337, because Plaintiff's claims arise under Section 203 of the Communications Act, 47 U.S.C. § 203; (b) 28 U.S.C. § 1332, because the parties are citizens of different states and the amount in

controversy exceeds $75,000; and (c) 47 U.S.C. § 207, which vests the district courts with jurisdiction to hear suits seeking monetary damages under the Communications Act. Collection of unpaid charges for service under the federal CEA Tariff arises under the Communications Act because the claim relies upon a tariff which is required by that federal statute to be filed with the Federal Communications Commission ("FCC"). *Worldcom, Inc. v. Graphnet, Inc.*, 343 F.3d 651, 654 (3rd Cir. 2003). Furthermore, an act of Congress, 47 U.S.C. § 204(a)(3), declared the CEA Tariff prices to be lawful.

RESPONSE: AT&T admits that this Court has subject matter jurisdiction over an action to collect on a federal tariff filed with the FCC pursuant to the Communications Act. To the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T otherwise denies the remaining allegations in this paragraph.

6. A court is the only forum where Plaintiff can bring a suit against a customer of its CEA service, like Defendant. This collection action could not have been filed with the FCC. The FCC has repeatedly held that it lacks jurisdiction to consider a complaint against a customer, and that the proper forum for recovery of charges due under the terms of a tariff is the federal district court. *U.S. Telepacific Corp. v. Tel-America of Salt Lake City, Inc.*, 19 FCC Rcd 24552, 24555-56 ¶ 8 (2004). Moreover, in declining jurisdiction over collection actions, the FCC has specifically recognized that "issues of tariff interpretation are well within the expertise of the District Court." *Id.*, 19 FCC Rcd at 24556 n. 31.

RESPONSE: AT&T admits, as a general matter, that a common carrier may not file a collection action against a customer at the FCC. To the extent that the allegations in this paragraph purport to characterize FCC orders and decisions, AT&T respectfully refers the Court to such orders and decisions for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. To the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies the remaining allegations in this paragraph.

7. This Court also has supplemental jurisdiction over breach of state tariff claims pursuant to 28 U.S.C. § 1367(a).

RESPONSE: To the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies the remaining allegations in this paragraph.

8. Venue is proper in this judicial district because Defendant AT&T's principal place of business is located in Bedminster, New Jersey. INS sent invoices for CEA service to AT&T in New Jersey. This collection action arises from the decisions that AT&T made in New Jersey to refuse payment of INS' invoices for CEA service. The AT&T employees that reviewed INS' invoices, analyzed the CEA Tariffs, made the decision to breach those tariffs, and improperly disputed INS' invoices are located in New Jersey. For example, the AT&T e-mails refusing to pay the CEA Tariff rates were written by Jack Habiak, who is located in New Jersey. As the acts and omissions by AT&T that gave rise to INS' tariff claims occurred in New Jersey, AT&T's breach of the CEA Tariffs occurred in New Jersey.

RESPONSE: AT&T admits that venue is proper in this judicial district and that its principal place of business is located in Bedminster, New Jersey. AT&T also admits that i) it received certain invoices from INS and ii) some of AT&T's employees, including Mr. Jack Habiak, with knowledge of this dispute are located in New Jersey. AT&T denies the remaining allegations in this paragraph.

9. This Court has personal jurisdiction over Defendant AT&T because AT&T does business throughout New Jersey, and its principal place of business is located in Bedminster, New Jersey.

RESPONSE: AT&T admits the allegations in this paragraph.

10. This suit is timely because it is being filed prior to the expiration of the two year statute of limitations set forth in Section 415(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 415(a).

RESPONSE: To the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies the remaining allegations in this paragraph.

11. Plaintiff INS is a CEA service provider incorporated in the State of Iowa, and has its principal place of business in West Des Moines, Iowa.

RESPONSE: AT&T admits that INS provides regulated switched access services. AT&T lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and they are therefore denied.

12. INS provides CEA service to Illinois, Minnesota, Iowa, Missouri, Nebraska, and South Dakota.

RESPONSE: AT&T lacks knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph, and they are therefore denied.

13. Defendant AT&T Corp. is a New York corporation with its principal place of business in Bedminster, New Jersey. AT&T Corp. provides interstate long distance telephone service to customers located in several states, including customers located in New Jersey, Illinois, Minnesota, Iowa, Missouri, Nebraska, and South Dakota

RESPONSE: AT&T admits the allegations in this paragraph.

14. CEA service is one of the telecommunications services provided by INS. CEA service is provided to other telecommunications carriers. CEA service is not provided to individual consumers or end users.

RESPONSE: AT&T admits that INS purports to provide regulated switched access service, and that some of its services are described as CEA. AT&T lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and they are therefore denied.

15. CEA service provides AT&T with the use of INS' 2,700 mile fiber optic cable network and access tandem switches to complete AT&T's long distance telephone calls. CEA service acts as a bridge between the networks of long distance telephone companies, like AT&T, and the local exchange networks of more than 140 local exchange carriers ("LECs").

RESPONSE: AT&T admits that CEA service can provide long distance carriers (also known as interexchange carriers, or "IXCs") with the use of INS's access tandem switching, and other switched access services to complete certain long distance telephone calls. AT&T further admits, as a general matter, that CEA service can be used to transport traffic between the

networks of long distance telephone companies and the local exchange networks of LECs. AT&T denies, however, that it is required to use INS's CEA traffic in all circumstances for calls to all LECs, such as Competitive Local Exchange Carriers ("CLECs"). AT&T lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and they are therefore denied.

16. The FCC and the Iowa Utilities Board granted authorizations to INS to provide CEA service, and those authorizations continue to govern INS' operations today. *Application of Iowa Network Access Division for Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.01of the Commission's Rules and Regulations to Lease Transmission Facilities to Provide Access Service to Interexchange Carriers in the State of Iowa, Memorandum Opinion, Order and Certificate*, 3 FCC Rcd. 1468, 1471 ¶¶ 21, 23 (1988) ("*Federal Certificate*"), *aff'd on recon.*, 4 FCC Rcd 2201 (1989); *Iowa Network Access Division, Division of Iowa Network Services*, Iowa Utilities Board Docket No. RPU-88-2, 1988 Iowa PUC LEXIS 1 (1988) ("*State Authorization*"), *aff'd on appeal, Northwestern Bell Tel. Co. v. Iowa Utilities Board,* 477 N.W.2d 678, 681 (Iowa 1991). The *Federal Certificate* and *State Authorization* require interexchange carriers, like AT&T, to deliver their calls to the INS CEA network, when the calls are destined for a LEC that has chosen to enter into a traffic agreement with INS. *Federal Certificate*, 3 FCC Rcd. at 1473 ¶ 33 (holding that "We do not believe that the mandatory termination requirement for interstate traffic is unreasonable or differs substantially from the normal way access is provided"); *State Authorization* at *12 ("The participating telephone companies will be allowed to route their traffic pursuant to their participation agreement with INS").

RESPONSE: AT&T admits as a general matter that in the 1980s the FCC and the Iowa Utilities Board granted authorizations to INS to operate. To the extent that the allegations in this paragraph otherwise purport to characterize these agencies' orders and decisions, AT&T respectfully refers the Court to the orders and decisions for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. AT&T denies the remaining allegations in this paragraph.

17. AT&T does not operate local exchange facilities in the states where INS offers CEA service, and AT&T's long distance network does not extend to the LECs' networks connected to INS' CEA service.

RESPONSE: AT&T admits, as a general matter, that it is sometimes true that AT&T's long distance network does not extend to some LECs' networks connected to INS's CEA service. AT&T denies the remaining allegations in this paragraph.

18. Long distance telephone companies, like AT&T, are also referred to as "interexchange carriers" or "IXCs."

RESPONSE: AT&T admits the allegations in this paragraph.

19. INS owns wires and facilities that span the distance between AT&T's long distance network and the LECs' networks connected to INS' CEA service.

RESPONSE: AT&T admits that INS is a LEC providing a portion of regulated switched access service to AT&T. AT&T denies the remaining allegations in this paragraph.

20. Beginning with INS' September, 2013 invoice (for CEA service provided in August, 2013), AT&T has withheld payment of some amounts billed by INS for CEA service.

RESPONSE: AT&T admits that, beginning in September 2013, it made certain payments to INS and withheld certain other payments; the withheld payments, and some of the payments it made, were unlawfully billed under the tariffs and/or the FCC's rules. AT&T denies the remaining allegations in this paragraph.

21. During the period of time for which AT&T has been withholding payment, INS has provided CEA service to AT&T.

RESPONSE: AT&T denies that INS has lawfully provided AT&T with CEA service pursuant to a lawful tariff and/or the FCC's rules. AT&T denies the remaining allegations in this paragraph.

22. AT&T has used the CEA service provided by INS to complete the telephone calls of AT&T's customers.

RESPONSE: AT&T admits that its customers have placed and/or received some long distance calls that have also been carried in part over INS's facilities, but AT&T denies that INS has valid tariffs and also denies that INS has properly billed AT&T under INS's tariffs and/or the

FCC's rules for any services that INS provided in connection with such calls. AT&T denies the allegations in this paragraph.

23. Since August 1, 2013, AT&T has routed calls over INS' facilities.

RESPONSE: AT&T admits that its customers have placed and/or received some long distance calls that have also been carried in part over INS's facilities, but AT&T denies that INS has valid tariffs and also denies that INS has properly billed AT&T under INS's tariffs and/or the FCC's rules for any services that INS provided in connection with such calls. AT&T denies the allegations in this paragraph.

24. CEA service involves AT&T's use of INS' facilities between a LEC's network and AT&T's long distance network to enable an AT&T customer located in the LEC's service area to place a long distance call.

RESPONSE: AT&T admits, as a general matter, that CEA service is a regulated switched access service provided by LECs that can be used in completing certain long distance telephone calls. AT&T admits that its customers have placed and/or received some long distance calls that have also been carried in part over INS's facilities, but AT&T denies that INS has valid tariffs and also denies that INS has properly billed AT&T under INS's tariffs and/or the FCC's rules for any services that INS provided in connection with such calls. AT&T denies the remaining allegations in this paragraph.

25. During the period of time for which AT&T has been withholding payment, INS carried calls placed by some of AT&T's customers that were routed to AT&T's long distance network.

RESPONSE: AT&T admits that its customers have placed and/or received some long distance calls that have also been carried in part over INS's facilities, but AT&T denies that INS has valid tariffs and also denies that INS has properly billed AT&T under INS's tariffs and/or the

FCC's rules for any services that INS provided in connection with such calls. AT&T denies the remaining allegations in this paragraph.

26. Since August 1, 2013, INS provided switching and transport for certain calls placed by AT&T's customers that were routed to AT&T's long distance network.

RESPONSE: AT&T admits that its customers have placed and/or received some long distance calls that have also been carried in part over INS's facilities, but AT&T denies that INS has valid tariffs and also denies that INS has properly billed AT&T under INS's tariffs and/or the FCC's rules for any services that INS provided in connection with such calls. AT&T denies the remaining allegations in this paragraph.

27. CEA service also involves AT&T's use of INS' facilities between AT&T's long distance network and a LEC's network to enable an AT&T customer to complete long distance calls to phones and other equipment located in the town where the LEC provides local telephone service.

RESPONSE: AT&T admits, as a general matter, that CEA service is a regulated access service provided by LECs that can be used in completing long distance telephone calls. AT&T admits that its customers have placed and/or received some long distance calls that have also been carried in part over INS's facilities, but AT&T denies that INS has valid tariffs and also denies that INS has properly billed AT&T under INS's tariffs and/or the FCC's rules for any services that INS provided in connection with such calls. AT&T denies the remaining allegations in this paragraph.

28. During the period of time for which AT&T has been withholding payment, INS received calls from AT&T's long distance network and carried those calls to the LECs' networks connected to INS' CEA service.

RESPONSE: AT&T admits that its customers have placed and/or received some long distance calls that have also been carried in part over INS's facilities, but AT&T denies that INS has valid tariffs and also denies that INS has properly billed AT&T under INS's tariffs and/or the

FCC's rules for any services that INS provided in connection with such calls. AT&T denies the remaining allegations in this paragraph.

29. Since August 1, 2013, INS provided switching and transport for certain calls received from AT&T's long distance network that were routed to LECs' networks connected to INS' CEA service.

RESPONSE: AT&T admits that its customers have placed and/or received some long distance calls that have also been carried in part over INS's facilities, but AT&T denies that INS has valid tariffs and also denies that INS has properly billed AT&T under INS's tariffs and/or the FCC's rules for any services that INS provided in connection with such calls. AT&T denies the remaining allegations in this paragraph.

30. Since August 1, 2013, INS has provided CEA service to AT&T.

RESPONSE: AT&T admits that its customers have placed and/or received some long distance calls that have also been carried in part over INS's facilities, but AT&T denies that INS has valid tariffs and also denies that INS has properly billed AT&T under INS's tariffs and/or the FCC's rules for any services that INS provided in connection with such calls. AT&T denies the remaining allegations in this paragraph.

31. The prices and other terms governing CEA service are contained in tariffs filed with the FCC and state regulatory agencies.

RESPONSE: AT&T admits, as a general matter, that INS, like other LECs, files tariffs with the FCC and with state regulatory agencies, and that these tariffs contain prices and other terms governing service. AT&T denies the remaining allegations in this paragraph.

32. Copies of the CEA tariffs are attached as Exhibits B, C, and D (herein referred to as the "CEA Tariffs").

RESPONSE: AT&T admits that Exhibits B, C, and D to the Complaint are purported copies of the tariffs. AT&T denies that these tariffs are lawful and/or consistent with the FCC's rules. AT&T denies the remaining allegations in this paragraph.

33. The interpretation and application of a tariff present a question of law. *AT&T Corp. v. JMC Telecom, LLC*, 470 F.3d 525, 534 (3rd Cir. 2006); *Farmers Union Livestock Commission v. Union Pacific Railroad Co.*, 283 N.W. 498, 504 (Neb. 1939) (holding that a tariff rate has "the force of a statute").

RESPONSE: To the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies the remaining allegations in this paragraph.

34. AT&T paid the prices in the CEA Tariffs prior to the September, 2013 invoice.

RESPONSE: AT&T admits that it paid certain charges billed pursuant to INS's tariffs prior to the September 2013 invoice, including charges that INS unlawfully billed. AT&T denies the remaining allegations in this paragraph.

35. AT&T has paid the prices in the CEA Tariffs for more than 20 years.

RESPONSE: AT&T admits that INS has been in operation since about the 1980s, and also admits that, as a general matter, AT&T has in certain past years paid for INS's tariffed services, but such payments were owed only when INS had lawful tariffs and when INS properly billed AT&T under those tariffs, the Communications Act, state law, and governing rules of the FCC and other regulatory agencies. AT&T denies the remaining allegations in this paragraph.

36. AT&T fully paid INS' August, 2013 invoice and previous invoices for CEA Service.

RESPONSE: AT&T admits it paid certain charges billed pursuant to INS's tariffs prior to the September 2013 invoice, including charges that INS unlawfully billed. AT&T denies the remaining allegations in this paragraph.

37. The CEA Tariffs were properly filed with the FCC and state regulators.

RESPONSE: AT&T denies the allegations in this paragraph.

38. The CEA Tariffs are currently effective.

RESPONSE: AT&T denies the allegations in this paragraph.

39. INS has sent monthly invoices to AT&T for CEA service.

RESPONSE: AT&T admits that it has received monthly invoices from INS. AT&T denies that these invoices were lawfully billed pursuant to INS's tariffs and/or the FCC's rules. AT&T denies the remaining allegations in this paragraph.

40. The prices that INS billed AT&T for CEA service since September 1, 2013, are the same prices that are currently effective in the CEA Tariffs.

RESPONSE: AT&T denies that INS has valid and effective tariffs on file with the FCC or state regulators, and denies that the prices in those tariffs are effective, just, or reasonable. AT&T denies the remaining allegations in this paragraph.

41. The dollar amounts billed by INS, as set forth in the statement of account (attached as Exhibit A), can be calculated by applying the prices in the CEA Tariffs to AT&T's minutes-of-use for CEA service.

RESPONSE: AT&T admits, as a general matter, that bills for access service are often determined by calculating the number of minutes of service used at the rates set forth in the applicable tariffs. However, AT&T denies that INS's tariffs or rates are lawful. AT&T denies the remaining allegations in this paragraph.

42. AT&T has failed to fully pay INS' September, 2013 invoice and subsequent invoices for CEA service.

RESPONSE: AT&T admits, as a general matter, that since September 2013, it made certain payments to INS and withheld certain other payments; the withheld payments, and some

of the payments it made, were unlawfully billed under the tariffs and/or the FCC's rules. AT&T denies the remaining allegations in this paragraph.

43. AT&T continues to take CEA service from INS.

RESPONSE: AT&T admits that its customers have placed and/or received some long distance calls that have also been carried in part over INS's facilities, but AT&T denies that INS has valid tariffs and also denies that INS has properly billed AT&T under INS's tariffs and/or the FCC's rules for any services that INS provided in connection with such calls. AT&T avers that it would prefer not to use INS's service for certain telephone calls. AT&T denies the remaining allegations in this paragraph.

44. Since August 1, 2013, AT&T has received payments from AT&T's customers who placed calls that were carried, in part, by INS' CEA network.

RESPONSE: As a general matter, AT&T admits that payments AT&T receives from its customers are governed by separate agreements AT&T has with its customers, and whether AT&T is entitled to payment under those agreements is, as a general matter, unrelated to whether or how AT&T is billed for switched access services by INS or other LECs. AT&T further admits that, as a general matter, it is often entitled to payments from its customers even when a LEC providing a switched access service to AT&T on calls to its customers improperly bills AT&T for the access services under the relevant tariffs, contracts, or governing law. Consequently, AT&T avers that its agreements with its customers, and any payments to which AT&T may be entitled under those agreements, are irrelevant to this action. As to any specific payments from its customers that may have in part involved INS's improperly billed services, AT&T at this juncture lacks knowledge and information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and they are therefore denied.

45. FCC regulations preclude INS from discontinuing CEA service to AT&T for nonpayment. *Connect America Fund*, 26 FCC Rcd 17663, 18028 ¶ 973 (2011) ("*FCC's USF/ICC Order*").

RESPONSE: AT&T admits that INS's switched access services are generally subject to the FCC's rules and regulations in the FCC's order entitled *Connect America Fund*, 26 FCC Rcd 17663 (2011), and specifically to the provisions in the rules that preclude INS from raising its rates above the levels existing on December 29, 2011. AT&T denies the remaining allegations in this paragraph.

46. Furthermore, AT&T has not notified INS that it wants INS to disconnect AT&T from the INS CEA network.

RESPONSE: AT&T admits that it has not taken the position that INS should entirely disconnect AT&T's facilities from INS's facilities, and thus AT&T has never made such a request to INS. In fact, AT&T avers that AT&T generally may not take steps to block traffic to and from a particular LEC on the grounds that the LEC is engaged in access stimulation. However, AT&T denies that it has not requested INS to make available to AT&T more efficient and more reasonable arrangements for transporting traffic to LECs involved in access stimulation. AT&T avers that it was told by INS that AT&T would effectively pay INS the same amounts for transport even if INS were not providing CEA services on traffic to LECs engaged in access stimulation. AT&T denies any remaining allegations in this paragraph

47. On November 8, 2013 and February 28, 2014, Jack Habiak, an AT&T employee, sent e-mails to INS stating that AT&T will not pay the prices in the CEA Tariffs (hereinafter referred to as the "AT&T E-mails"). Those e-mails are attached as Exhibits E and F. INS' response to the AT&T E-mails is attached as Exhibit G.

RESPONSE: AT&T admits that Exhibits E, F, and G to the Complaint are correspondence between AT&T and INS. To the extent that the allegations in this paragraph purport to characterize the contents of this correspondence, AT&T respectfully refers the Court

to the correspondence for an accurate and complete statement of its contents, and AT&T denies all inconsistent allegations.

48. The AT&T E-mails generally allege two counterclaims: (1) that the CEA Tariff prices are too high; and (2) that Great Lakes Communications ("Great Lakes"), an unaffiliated third party LEC to which AT&T is sending calls, is not fully complying with certain regulations applicable to Great Lakes. These counterclaims are meritless as a matter of law.

RESPONSE: AT&T states that it had not yet filed counterclaims when the Complaint was filed. To the extent that the allegations in this paragraph purport to characterize the contents of AT&T's emails, AT&T respectfully refers the Court to the emails for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. AT&T denies that any potential "counterclaims" mentioned in the referenced emails are meritless as a matter of law. AT&T denies the remaining allegations in this paragraph.

49. INS is a common carrier. Furthermore, the CEA service provided by INS is a telecommunications service.

RESPONSE: AT&T admits that INS is a common carrier. AT&T admits that the switched access services provided by INS, including any services that are generally described as CEA service, are telecommunications services. AT&T denies the remaining allegations in this paragraph.

50. As a common carrier, INS has a statutory duty to establish a physical connection with AT&T, and "to establish through routes and charges applicable thereto and the divisions of such charges." Communications Act of 1934, as amended, 47 U.S.C. § 201(a).

RESPONSE: AT&T admits that INS is a common carrier. To the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies the remaining allegations in this paragraph.

51. The CEA network provides a "through route" between AT&T's long distance network and the networks of other carriers, such as LECs.

RESPONSE: To the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies the remaining allegations in this paragraph.

52. Tariffs are filed at the FCC containing the prices that are charged to other carriers, such as AT&T, for transmitting calls over a through route. 47 U.S.C. § 203(a).

RESPONSE: AT&T admits, as a general matter, that tariffs containing prices charged to carriers are filed with the FCC. AT&T denies the remaining allegations in this paragraph.

53. The CEA Tariffs (attached as Exhibits B, C, and D) contain the prices for the through route that the CEA network provided (and continues to provide) to AT&T.

RESPONSE: AT&T admits that INS filed tariffs containing its prices, and that copies of these purported tariffs are attached as Exhibits B, C, and D to the Complaint. AT&T denies these tariffs are lawful and denies the remaining allegations in this paragraph.

54. INS is required to make a tariff filing at least every two years that includes a cost study and other data supporting the lawfulness of the CEA Tariff prices. Cost and traffic data determine whether the CEA Tariff prices should be increased or decreased. The data that INS must file with the FCC to support a CEA Tariff price increase are described in FCC Rule 61.38, 47 C.F.R. § 61.38.

RESPONSE: AT&T admits that INS files tariffs pursuant to FCC Rule 61.38, 47 C.F.R. § 61.38. To the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. To the extent that the allegations in this paragraph purport to characterize the rules and regulations governing tariff filings, AT&T respectfully refers the Court to such rules and regulations for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. AT&T denies the remaining allegations in this paragraph.

55. FCC Rule 61.38 applies to dominant carriers.

RESPONSE: AT&T admits that FCC Rule 61.38 applies to dominant carriers and further avers that carriers filing under FCC Rule 61.38 are rate of return regulated Incumbent Local Exchange Carriers ("ILECs").

56. INS is classified as a dominant carrier in its provision of CEA service.

RESPONSE: AT&T admits that INS is classified as a dominant carrier with respect to its access services. AT&T denies the remaining allegations in this paragraph.

57. FCC Rule 69.3(f)(1), 47 C.F.R. § 69.3(f)(1), requires tariff prices calculated pursuant to FCC Rule 61.38 to be filed at least every two years. However, this requirement does not preclude tariff price adjustments to be filed more frequently. 47 C.F.R. § 69.3(b).

RESPONSE: To the extent that the allegations in this paragraph purport to characterize the rules and regulations governing tariff filings, AT&T respectfully refers the Court to such rules and regulations for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. To the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies the remaining allegations in this paragraph.

58. When the FCC is concerned about the lawfulness of an increase in a tariff price, the FCC may suspend and investigate the tariff price increase. 47 U.S.C. § 204(a).

RESPONSE: To the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies the remaining allegations in this paragraph.

59. The current prices in the CEA Tariffs have not been suspended or rejected by the FCC.

RESPONSE: AT&T admits that the current prices in the tariffs have not been suspended or rejected by the FCC. However, AT&T denies that the FCC's failure to suspend or reject a tariff precludes a subsequent finding that INS is acting unreasonably or unlawfully in

operating under such tariff. AT&T also avers that, under the Communications Act and the FCC's rules, INS was barred from filing tariffs with the current rates, which the FCC has previously said could not be filed and are unjust and unreasonable.

60. A tariff can be retroactively stripped of its lawful status and rendered *void ab initio* only when the FCC has expressly made "mandatory detariffing a retroactive punishment." *Paetec Communications, Inc. v. MCI Communications Services, Inc.*, 712 F. Supp. 2d 405, 421 (E.D. Pa. 2010), *appeal withdrawn*, No. 11-2268 (3rd Cir. 2012). The FCC has never created such a retroactive punishment for CEA service. Instead of detariffing, the FCC has classified CEA service as a dominant carrier service for which tariff prices must be revised at least every two years in accordance with FCC Rule 61.38.

RESPONSE: To the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies the remaining allegations in this paragraph.

61. As its first counterclaim, the AT&T E-mails allege that the prices in the CEA Tariffs "are unjust and unreasonable pursuant to Section 201(b) of the Telecommunications Act." The AT&T E-mails also contend that the *FCC's USF/ICC Order* required INS to cap its interstate price for CEA service and reduce its intrastate price for CEA service.

RESPONSE: AT&T states that it had not yet filed counterclaims when the Complaint was filed. Further, to the extent that the allegations in this paragraph purport to characterize the contents of AT&T's emails, AT&T respectfully refers the Court to the emails for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. AT&T denies the remaining allegations in this paragraph.

62. This first counterclaim fails to allege a cognizable claim because the *FCC's USF/ICC Order* did not address CEA service and the prices in the CEA Tariffs are just and reasonable as a matter of federal law. The application of the CEA Tariffs is a question of law. *AT&T Corp. v. JMC Telecom, LLC*, 470 F.3d at 534. INS' federal tariff was filed with the FCC pursuant to the procedures established by Congress at 47 U.S.C. § 204(a)(3) for a tariff to be "deemed lawful." Prices and other terms contained in a lawful tariff are "just and reasonable" as a matter of law. *Virgin Islands Telephone Corp. v. FCC*, 444 F.3d 666, 669 (D.C. Cir. 2006). 47 U.S.C. § 201(b) only prohibits unreasonable or unlawful tariff prices.

RESPONSE: AT&T states that it had not yet filed counterclaims when the Complaint was filed. AT&T denies that the referenced "counterclaim" fails to allege a cognizable claim. Further, to the extent that the allegations in this paragraph purport to characterize the contents of AT&T's emails, AT&T respectfully refers the Court to the emails for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. To the extent that the allegations in this paragraph purport to characterize the FCC's order, AT&T respectfully refers the Court to the order for an accurate and complete statement of its contents, and AT&T denies all inconsistent allegations. To the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies the remaining allegations in this paragraph.

63. There are only two ways for a tariff price to become substantively lawful. *Virgin Islands Telephone Corp. v. FCC*, 444 F.3d at 669. The tariff price can be adjudged lawful in a hearing before the FCC, or the price can be made a lawful – that is, a reasonable – price by statute, 47 U.S.C. § 204(a)(3).

RESPONSE: To the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies the remaining allegations in this paragraph.

64. When the FCC reviewed the CEA Tariff price and allowed it to become effective under 47 U.S.C. § 204(a)(3), the CEA Tariff price was made by statute a lawful price. Furthermore, the CEA Tariff price will remain lawful for so long as that tariff price remains effective. *Virgin Islands Telephone Corp. v. FCC*, 444 F.3d at 669 (holding that a "tariff that takes effect without prior suspension or investigation is conclusively presumed to be reasonable and thus, a lawful tariff during the period that the tariff remains in effect").

RESPONSE: AT&T denies the allegations in this paragraph. To the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach.

65. 47 U.S.C. § 204(a)(3) provides that a tariff price increase is lawful unless the FCC "takes action under 47 U.S.C. § 204(a)(1)" within 15 days after the tariff price increase is filed

with the FCC. *Virgin Islands Telephone Corp. v. FCC*, 444 F.3d at 669 n. 2. Section 204(a)(1) grants the FCC authority to "enter upon a hearing concerning the lawfulness [of a tariff]." *Id.*

RESPONSE: To the extent that the allegations in this paragraph purport to characterize the statute, AT&T respectfully refers the Court to the statute for an accurate and complete statement of its contents, and AT&T denies all inconsistent allegations. To the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies the remaining allegations in this paragraph.

66. INS filed a revision to its tariff with the FCC on June 17, 2013, proposing a small increase in the price of CEA service from $0.00623 per minute to $0.00896 per minute. During the 15 day statutory period, the FCC did not initiate a Section 204(a)(1) hearing concerning the lawfulness of the CEA tariff price increase. Therefore, the new CEA tariff price became effective 15 days after it was filed with the FCC.

RESPONSE: AT&T admits that INS filed a revision to its tariff with the FCC on June 17, 2013, proposing an increase in the price of its service of approximately 43%. AT&T admits as a general matter that the FCC did not investigate whether INS's specific price increase was unlawful but AT&T denies that any such investigation or hearing was necessary or required, because the FCC had already broadly held that price increases for access services were unlawful, unjust, and, unreasonable. Such unlawful, unjust or unreasonable price increases do not become lawful merely because of the passage of time. Consequently, AT&T denies that the new INS tariff prices became effective and/or valid. AT&T denies the remaining allegations in this paragraph.

67. The tariff filing is attached as Exhibit H. In compliance with FCC Rule 61.38, INS also filed with the FCC on June 17, 2013, cost and usage data supporting the increase in the CEA Tariff price. That detailed cost support demonstrated that the CEA Tariff price increase was reasonable in light of the increase in INS' transport costs, due to the additional mileage that INS is transmitting calls for long distance telephone companies (like AT&T), and the historical trend in declining traffic volumes.

RESPONSE: AT&T admits that a copy of the purported tariff filing is attached as Exhibit H to the Complaint. AT&T further admits that INS files tariffs pursuant to FCC Rule 61.38. AT&T admits that Exhibit H to the Complaint purports to be INS's filing with the FCC on June 17, 2013, but AT&T lacks knowledge and information sufficient to form a belief as to the content and timing of that filing, and this allegation is therefore denied. AT&T admits that INS has filed cost or usage data with the FCC, but AT&T denies (among other things) that INS's data is accurate and/or supports any increase in INS's tariffed prices, particularly since increases above the caps set by the FCC are unlawful. AT&T denies the remaining allegations in this paragraph.

68. AT&T has not filed a petition or complaint at the FCC regarding the increase in the CEA Tariff price. As the CEA Tariff price increase was electronically filed with the FCC on June 17, 2013, AT&T had ample opportunity to review the tariff filing on the FCC's website before it became effective on July 2, 2013. The FCC also issued a Public Notice regarding the CEA price increase. Public Notice, 2013 FCC LEXIS 2905.

RESPONSE: AT&T admits, as a general matter, that it has not filed a petition or complaint at the FCC regarding INS's increase in its tariff price, but AT&T denies that any such petition or complaint was necessary or required because the FCC had already ordered that such price increases were unlawful, unjust, and unreasonable. Such unlawful, unjust, or unreasonable price increases do not become lawful merely because of the passage of time. Consequently, AT&T denies that the new INS tariff prices became effective and/or valid. AT&T denies the second sentence of paragraph 68. AT&T admits that the FCC issued a Public Notice regarding INS's 2013 tariff filing. AT&T denies the remaining allegations in this paragraph.

69. INS is bound to collect the CEA Tariff price (the lawful price) under compulsion of statute, breaches of which are punishable by criminal prosecution or the payment of fines to the Government. 47 U.S.C. §§ 203(e) and 501. Section 203(c) of the Communications Act prohibits INS from giving AT&T a preferential price for CEA service. *AT&T v. Central Office Telephone, Inc.*, 524 U.S. 214, 222 (1998). "The policy of non-discriminatory rates is violated when similarly situated customers pay different rates for the same services." *Id.* at 223.

Therefore, when AT&T pays less than the CEA Tariff price, INS is obligated to try to collect the under-payment. 47 U.S.C. § 203(c). State legislatures have enacted similar state laws. Iowa Code § 476.5; Neb. Rev. Stat. § 75-126(1)(e).

RESPONSE: AT&T denies that INS is compelled to collect unjust and unreasonable prices; to the contrary, it is forbidden from doing so. To the extent that the allegations in this paragraph purport to characterize court orders or statutes, AT&T respectfully refers the Court to such orders or statutes for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. AT&T denies the remaining allegations in this paragraph.

70. The AT&T E-mails allege that the *FCC's USF/ICC Order* allows AT&T to pay less than the lawful and effective tariff price for CEA service already provided to AT&T. Such a claim seeking to pay less than the tariff rate for services rendered in the past is barred as a matter of law. *Worldcom, Inc. v. Graphnet, Inc.*, 343 F.3d at 656. The Communications Act does not authorize a court to retroactively condemn as unlawful, the tariff price previously established as reasonable and lawful by 47 U.S.C. § 204(a)(3), when the FCC permitted that tariff price to become effective and in force. Therefore, this Court's consideration of the allegations in the AT&T E-mails could end here.

RESPONSE: To the extent that the allegations in this paragraph purport to characterize the contents of AT&T's emails, AT&T respectfully refers the Court to the emails for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. To the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies the remaining allegations in this paragraph.

71. However, should the Court decide to reach the issue of whether the price reductions adopted in the *FCC's USF/ICC Order* apply to CEA service, it will then be necessary to consider whether the rules adopted by the *FCC's USF/ICC Order* apply to CEA service. The *FCC's USF/ICC Order* only addressed access tariff price reductions for LECs that provide local exchange service to end user consumers and businesses, who the LECs can charge higher rates, to offset the lower access tariff prices charged carriers, such as AT&T. The LECs' ability to earn additional revenue from end users was critical to the FCC's analysis of whether LECs would continue to earn the constitutionally-required return on regulated investment after reducing the prices they charged AT&T. *FCC's USF/ICC Order*, 26 FCC Rcd at 17997 ¶ 924. By contrast, CEA service cannot earn additional revenue from end users because CEA service is not provided to end users. The 5th Amendment of the Constitution requires an agency to conduct a hearing and

apply the "end result" standard to ensure that an agency-prescribed price for regulated service does not have unjust and unreasonable consequences. *Jersey Central Power & Light Co. v. Federal Energy Regulatory Commission*, 810 F.2d 1168, 177-1178 (D.C. Cir. 1987); *see also*, *Farmers Union Livestock Commission v. Union Pacific Railroad Co.*, 283 N.W. at 505 (holding that the retroactive taking of a lawful tariff price is unconstitutional). The *FCC's USF/ICC Order* not only did not consider whether a reduction in CEA Tariff prices would violate the 5th Amendment, the *FCC's USF/ICC Order* made no findings about CEA prices whatsoever.

RESPONSE: To the extent that the allegations in this paragraph purport to characterize the FCC's order, AT&T respectfully refers the Court to that order for an accurate and complete statement of its contents, and AT&T denies all inconsistent allegations. To the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach. AT&T denies the remaining allegations in this paragraph.

72. Because INS does not provide local exchange service to end users, INS is not a LEC for which the *FCC's USF/ICC Order* required tariff price reductions.

RESPONSE: AT&T lacks knowledge and information sufficient to form a belief as to whether INS does not provide local exchange service to end users, and this allegation is therefore denied. AT&T denies that INS is not a LEC for which the FCC's *USF/ICC Order* required tariff price reductions. AT&T denies the remaining allegations in this paragraph.

73. INS does not provide local exchange service or local telephone service. Local exchange service is defined as "telephone service furnished between customers or users located within an exchange area." 199 Iowa Admin. Code 22.1(3). INS does not provide CEA service to end users. INS also does not provide local telephone service between INS end users located within the same local exchange area. Therefore, INS does not provide local exchange service. Instead, INS serves as an intermediate carrier transmitting calls between AT&T's network and exchanges served by third party LECs. Furthermore, CEA service is provided and billed to carriers, such as AT&T (not end users).

RESPONSE: AT&T lacks knowledge and information sufficient to form a belief as to whether INS does not provide local exchange service or local telephone service, and therefore this allegation is denied. To the extent that the allegations in this paragraph purport to

characterize regulations governing local exchange service, AT&T respectfully refers the Court to such regulations for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. AT&T denies the remaining allegations in this paragraph.

74. The *FCC's USF/ICC Order* also does not apply to the functions performed by CEA service. The focus of the *FCC's USF/ICC Order* is the originating access service and terminating access service provided by LECs to the LECs' end office switches. CEA service does not originate or terminate calls. Instead, CEA service is an intermediate service carrying the traffic on the route between LECs and IXCs. As CEA service does not originate or terminate traffic to end offices, it does not provide the originating and terminating access services subject to the *FCC's USF/ICC Order.*

RESPONSE: To the extent that the allegations in this paragraph purport to characterize the FCC's order, AT&T respectfully refers the Court to that order for an accurate and complete statement of its contents, and AT&T denies all inconsistent allegations. AT&T denies the remaining allegations in this paragraph.

75. The *FCC's USF/ICC Order* adopted FCC Rules 51.907, 51.909, and 51.911, which prescribed price reductions for only three types of LECs: "Price Cap Carrier," "Rate-of-Return Carrier," and "Competitive Local Exchange Carrier." 47 C.F.R. §§ 51.907, 51.909, and 51.911. As INS is not classified under any of these LEC types, these rules do not call for reductions in the price for CEA service.

RESPONSE: AT&T admits that the FCC's *USF/ICC Order* adopted FCC Rules 51.907, 51.909, and 51.911, and AT&T avers that INS is subject to at least one of those Rules. To the extent that the allegations in this paragraph purport to characterize these rules, AT&T respectfully refers the Court to the rules for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. AT&T denies that INS is not classified under any LEC type, and AT&T denies that the FCC's *USF/ICC Order*, and the rules it adopted, do not call for INS to reduce its price for CEA service. AT&T denies the remaining allegations in this paragraph.

76. INS is not a "Price Cap Carrier" because INS is not a LEC subject to price cap regulation pursuant to 47 C.F.R. §§ 61.41 through 61.49. Therefore, the tariff price reductions for "Price Cap Carriers" described in FCC Rule 51.907 are inapplicable to CEA service.

RESPONSE: AT&T admits, as a general matter, that INS is not a Price Cap Carrier and that the tariff price reductions in FCC Rule 51.907 pertaining to Price Cap Carriers are therefore not applicable to INS. AT&T denies that INS is not a LEC and denies the remaining allegations in this paragraph.

77. Because INS is not an incumbent local exchange carrier, INS is also not a "Rate of Return Carrier," which is defined as "any incumbent local exchange carrier not subject to price cap regulation." 47 C.F.R. § 51.903(g). INS is not an incumbent local exchange carrier because INS does not provide local exchange service and has not been granted a certificate of public convenience and necessity to do so. An incumbent local exchange carrier is "a utility, or successor to such utility, that was the historical provider of local exchange service pursuant to an authorized certificate of public convenience and necessity." 199 Iowa Admin. Code 22.1(3). *See also, Iowa Network Services, Inc.*, Docket No. SPU-06-12, 2006 Iowa PUC LEXIS 420 *5 (2006) (holding that INS is not an incumbent local exchange carrier). Therefore, because INS is not an incumbent local exchange carrier, the tariff price reductions for "Rate-of-Return Carriers" described in FCC Rule 51.909 are inapplicable to INS and its CEA service.

RESPONSE: To the extent that the allegations in this paragraph purport to characterize rules and decisions governing Rate-of-Return Carriers and ILECs, AT&T respectfully refers the Court to the rules and decisions for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. AT&T denies that INS is not a "Rate-of-Return Carrier" and denies that the tariff price reductions described in FCC Rule 51.909 are inapplicable to INS. AT&T denies the remaining allegations in this paragraph.

78. Furthermore, to ensure that "Rate-of-Return Carriers" would be able to earn the constitutionally-required minimum return on regulated investment, the FCC permitted "Rate-of-Return Carriers" to bill a new Access Recovery Charge ("ARC") to end users. Only incumbent local exchange carriers were allowed to bill an ARC to recover revenues lost from reducing their access rates. *FCC's USF/ICC Order*, 26 FCC Rcd at 17956 ¶ 847. INS has no end users it could bill an ARC, and because INS is not an incumbent local exchange carrier, the *FCC's USF/ICC Order* does not authorize INS to bill an ARC in any event. *FCC's USF/ICC Order*, 26 FCC Rcd at 17957 ¶ 849. Without any cost recovery mechanism to offset a reduction in the price of CEA service, it is implausible that the *FCC's USF/ICC Order* was intended to subject CEA service to ratemaking designed for incumbent "Rate-of-Return Carriers." *See also, Connect America Fund*,

2014 FCC LEXIS 1090 ¶ 4 (Mar. 31, 2014) (clarifying that only "incumbent LECs were required to reduce certain intrastate switched access rates that exceeded comparable interstate switched access rates to interstate rate levels using the interstate rate structure").

RESPONSE: To the extent that the allegations in this paragraph purport to characterize the FCC's orders, AT&T respectfully refers the Court to the orders for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. AT&T denies the remaining allegations in this paragraph.

79. INS is also not a "Competitive Local Exchange Carrier," which is defined as "a utility, other than an incumbent local exchange carrier, that provides local exchange service pursuant to an authorized certificate of public convenience and necessity." 199 Iowa Admin. Code 22.1(3). As INS does not provide local exchange service and has not been granted a certificate of public convenience and necessity to do so, INS is not a "Competitive Local Exchange Carrier." Furthermore, to ensure they continue to earn the constitutionally-required minimum level of compensation, the FCC permitted Competitive Local Exchange Carriers to increase end user charges to offset reductions in access rates charged to carriers, such as AT&T. *FCC's USF/ICC Order*, 26 FCC Rcd at 17965 ¶ 864. By contrast, as CEA service is provided only to carriers (and not end users), it is impossible for INS to increase CEA prices for end users in order to reduce them for AT&T. Therefore, the tariff price reductions for "Competitive Local Exchange Carriers" described in FCC Rule 51.911 are inapplicable to CEA service.

RESPONSE: AT&T denies the allegations in this paragraph. To the extent that the allegations in this paragraph purport to characterize rules, orders, and decisions governing CLECs, AT&T respectfully refers the Court to those rules, orders, and decisions for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations.

80. CEA providers, such as INS, are not the only type of intermediate providers not subject to the ratemaking rules adopted in *FCC's USF/ICC Order*. For example, it is common for long distance telephone companies, like AT&T, to purchase least cost routing services from intermediate providers in order to transmit calls to the LECs' networks. *Rural Call Completion*, 28 FCC Rcd 16154, 16163 (2013). Those intermediate providers of least cost routing services were not required by the *FCC's USF/ICC Order* to reduce the prices they charge AT&T. Like INS, intermediate providers of least cost routing services do not provide local exchange service to end users. AT&T pays inter-carrier compensation to both INS and other intermediate providers to transmit AT&T's calls to the same LECs connected to INS' CEA network. Wireless carriers and VoIP providers are other examples of service providers not subject to the price reductions in the *FCC's USF/ICC Order.*

RESPONSE: AT&T denies the allegations in this paragraph. To the extent that the allegations in this paragraph purport to characterize the FCC's order, AT&T respectfully refers the Court to the order for an accurate and complete statement of its contents, and AT&T denies all inconsistent allegations.

81. Regardless of how the *FCC's USF/ICC Order* is interpreted, AT&T must pay the CEA Tariff prices because they are "lawful," as a matter of substantive statutory law. Even if AT&T is correct in alleging that the CEA Tariff prices are too high (which they clearly are not), AT&T is still required to pay the CEA Tariff prices so long as they remain effective, because the currently effective prices are lawful. The failure to pay "lawful" tariff prices with respect to services provided and billed in the past is impermissible. *Virgin Islands Telephone Corp. v. FCC*, 444 F.3d at 669. "Remedies against carriers charging lawful rates later found unreasonable must be prospective only." *Id.*

RESPONSE: AT&T denies the allegations in this paragraph. To the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach.

82. Only the FCC can revise "lawful" tariff prices (and only prospectively). *Ambassador, Inc. v. United States*, 325 U.S. 317, 324 (1945) ("the objection must be addressed to the Commission and not as an original matter brought to the court"); *AT&T Corp. v. JMC Telecom, LLC*, 470 F.3d at 534 (noting that "the task of determining a reasonable rate is reserved to the exclusive province of the FCC"); *Associated Press v. FCC*, 448 F.2d 1095, 1104 (D.C. Cir. 1971) (holding that "this court has no authority to invade the province of the Commission by ordering it to reject a rate, without a hearing, on the ground that it is unlawfully high"). Therefore, should AT&T bring before this Court, the counterclaims alleged in the AT&T Emails seeking to pay less than the CEA Tariff rate, such AT&T claims should be dismissed as a matter of law.

RESPONSE: AT&T denies the allegations in this paragraph. To the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach.

83. Since INS' September, 2013 invoice, AT&T has not paid INS anything for CEA service when AT&T's calls are transmitted to Great Lakes' facilities.

RESPONSE: AT&T admits that since September 2013, it made certain payments to INS and withheld certain other payments; the withheld payments, and some of the payments it

made, were unlawfully billed under the tariffs and/or the FCC's rules. AT&T denies the remaining allegations in this paragraph.

84. Courts have upheld state and federal regulatory decisions holding that, when a LEC, such as Great Lakes, enters into a traffic agreement with INS, the point of interconnection for an interexchange carrier, such as AT&T, to transmit calls to that LEC's facilities is with the CEA network. *Northwestern Bell Tel. Co. v. Iowa Utilities Board*, 477 N.W.2d at 681, 687.

RESPONSE: AT&T lacks knowledge and information sufficient to form a belief as to the truth of the allegations regarding any traffic agreement between INS and Great Lakes (though any such agreement is relevant here and should be produced in discovery), and thus any allegations regarding such agreement are denied. AT&T denies the remaining allegations in this paragraph. Moreover, to the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach.

85. End user consumers have a choice of purchasing local telephone service from incumbent LECs, competitive LECs, or wireless carriers. Those service providers, in turn, have a competitive choice of whether they want to enter into a CEA traffic agreement with INS.

RESPONSE: AT&T admits that consumers of local telephone service, as a general matter, generally have a choice of providers of such services. AT&T denies the remaining allegations in this paragraph.

86. Great Lakes has entered into a traffic agreement with INS so that calls to and from Great Lakes' facilities will be transmitted over the CEA network.

RESPONSE: AT&T lacks knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph, and they are therefore denied.

87. When a LEC, such as Great Lakes, connects with the CEA network, the FCC has held that it is INS' sole responsibility to provide all transport facilities between the LEC's network and the facilities of long distance telephone companies, like AT&T. *AT&T Corp. v. Alpine Communications, LLC*, 27 FCC Rcd 11511, 11521 ¶ 27 (2012).

RESPONSE: AT&T denies the allegations in this paragraph. Moreover, to the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach.

88. As AT&T's second counterclaim, the AT&T E-mails assert that Great Lakes has not fully complied with certain regulatory prerequisites permitting the stimulation of access traffic. The *FCC's USF/ICC Order* adopted pricing rules permitting LECs, such as Great Lakes, to stimulate access traffic (which AT&T often refers to as traffic pumping).

RESPONSE: AT&T states that it had not yet filed counterclaims when INS filed its Complaint. To the extent that the allegations in this paragraph purport to characterize the contents of AT&T's emails, AT&T respectfully refers the Court to the emails for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. To the extent that the allegations in this paragraph purport to characterize the FCC's order, AT&T respectfully refers the Court to the order for an accurate and complete statement of its contents, and AT&T denies all inconsistent allegations. AT&T denies the remaining allegations in this paragraph.

89. The status of Great Lakes' regulatory compliance has no bearing on AT&T's obligation to pay the lawful CEA Tariff rates to INS. INS has no responsibility for Great Lakes' acts or omissions. It has been a long-standing FCC policy that "a carrier is responsible only for the services and facilities it provides to its customers, and not for those of a carrier with which it may be interconnected for through service." *AT&T*, 65 F.C.C.2d 624, 637 ¶ 35 (1977). Great Lakes is not an affiliate of INS. Furthermore, Great Lakes is not a party to the tariffed business relationship between INS and AT&T under the CEA Tariffs. Therefore, the status of Great Lakes' regulatory compliance does not provide a legal basis for AT&T to refuse to pay the lawful tariff rates for the CEA service provided by INS.

RESPONSE: To the extent that the third sentence purports to characterize FCC policy, AT&T respectfully refers the Court to the FCC's rules, regulations, and decisions for an accurate and complete statement of its policies, and AT&T denies all inconsistent allegations. AT&T denies the remaining allegations in this paragraph.

90. If AT&T has concerns about Great Lakes' regulatory compliance, AT&T should address those concerns to Great Lakes, not refuse to compensate INS for services lawfully rendered. However, AT&T and Great Lakes have settled their dispute over whether Great Lakes complies with the regulatory prerequisites for access stimulation. AT&T's dismissal of its claims against Great Lakes is attached as Exhibit I.

RESPONSE: AT&T admits that a purported copy of the dismissal of some of its claims against Great Lakes is attached to the Complaint as Exhibit I. AT&T denies the remaining allegations in this paragraph.

91. Moreover, recent regulatory agency decisions indicate that Great Lakes now fully complies with the rules permitting access stimulation. For example, the Iowa Utilities Board recently approved a settlement based on assurances from adversarial parties that Great Lakes is "not presently engaged in the provision of the types of high-volume access services that were disputed" and that Great Lakes' "tariffs will comply prospectively with the FCC's *Connect America Fund Order*." *Qwest Communications Corp. v. Superior Telephone Cooperative,* 2014 Iowa PUC LEXIS 44 *5 (2014).

RESPONSE: AT&T denies that recent regulatory agency decisions indicate that Great Lakes now fully complies with the rules permitting access stimulation. To the extent that the allegations in this paragraph purport to characterize the Iowa Utilities Board's decision, AT&T respectfully refers the Court to that decision for an accurate and complete statement of its contents, and AT&T denies all inconsistent allegations. AT&T denies the remaining allegations in this paragraph.

92. However, it is unnecessary for this Court to reach the issue of Great Lakes' regulatory compliance because such acts or omissions, especially those of unrelated third parties, do not provide a valid legal basis for not paying the tariff price. AT&T is barred as a matter of law from obtaining a preferential (less than tariff) price for CEA service regardless of whether AT&T accuses Great Lakes of unreasonable practices, fraud, willful misconduct, or some other tort. *AT&T Corp. v. JMC Telecom, LLC*, 470 F.3d at 532, *quoting AT&T v. Central Office Telephone, Inc.*, 524 U.S. at 227-228 ("[r]espondent can no more obtain unlawful preferences under the cloak of a tort claim than it can by contract").

RESPONSE: AT&T denies the allegations in this paragraph.

93. There is also absolutely no merit to the argument in the AT&T E-mails that the alleged regulatory non-compliance by Great Lakes should result in a total forfeiture of INS' rights to be compensated for CEA service. Since INS' September, 2013 invoice, AT&T has not

paid INS anything for CEA service that carried AT&T's calls to Great Lakes' facilities. Such an extraordinary harsh result is to be avoided when, as here, it is not "explicitly" authorized by any statute or regulation. *Worldcom, Inc. v. Graphnet, Inc.*, 343 F.3d at 655 (noting that "Forfeitures are not favored; they should be enforced only when within both letter and spirit of the law"). Furthermore, when either of two constructions can be given to a regulatory scheme, and one of them involves a total forfeiture, the other is to be preferred. *Id.* In this case, the regulatory scheme clearly requires AT&T to pay the CEA Tariff price regardless of the status of Great Lakes' regulatory compliance.

RESPONSE: AT&T denies the allegations in this paragraph. To the extent that the allegations in this paragraph purport to characterize the contents of AT&T's emails, AT&T respectfully refers the Court to the emails for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. To the extent that the allegations in this paragraph state conclusions of law, AT&T denies the allegations and further responds that all conclusions of law are for the Court to reach.

94. By refusing to properly compensate INS at the lawful tariff rates for CEA service, Defendant is plainly engaging in unlawful conduct that has inflicted significant, and ongoing, harm to INS. Therefore, should AT&T bring before this Court, any counterclaims alleging any pretext for avoiding payment of the CEA Tariff price, those AT&T claims should be dismissed as a matter of law.

RESPONSE: AT&T denies the allegations in this paragraph.

COUNT I

95. Plaintiff incorporates and re-alleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

RESPONSE: AT&T reincorporates its responses to the allegations of paragraphs 1 to 94 of the Complaint. AT&T denies any and all remaining allegations contained in paragraphs 1 through 94 not previously admitted.

96. Plaintiff provided CEA service to Defendant.

RESPONSE: AT&T denies that INS provided AT&T with services pursuant to a valid or effective tariff, and thus AT&T denies the allegations in this paragraph.

97. The rates, terms and conditions applicable to CEA service are contained in Plaintiff's tariff filed with the FCC. That tariff is attached as Exhibit B.

RESPONSE: AT&T admits that rates, terms, and conditions pertaining to INS's service are contained in its tariff filed with the FCC and that a copy of the purported tariff is attached as Exhibit B to the Complaint. AT&T denies that this tariff is lawful. AT&T denies the remaining allegations in this paragraph.

98. The rates, terms, and conditions contained in the CEA Tariff are deemed lawful pursuant to Section 204(a)(3) of the Communications Act, 47 U.S.C. § 204(a)(3).

RESPONSE: AT&T denies the allegations in this paragraph.

99. As a matter of statutory law, Defendant is required to pay the prices contained in the CEA Tariff. 47 U.S.C. §§ 203(c) and 204(a)(3).

RESPONSE: AT&T denies the allegations in this paragraph.

100. Defendant has received invoices from Plaintiff billing the prices for CEA service contained in the CEA Tariff.

RESPONSE: AT&T admits that it has received invoices from INS for its purported CEA service. AT&T denies that these invoices are accurate, lawful, or properly billed under applicable law and/or valid and effective tariffs. AT&T denies the remaining allegations in this paragraph.

101. Defendant has failed to fully pay the invoices Defendant has received from Plaintiff for CEA service.

RESPONSE: AT&T admits that it made certain payments to INS and withheld certain other payments; the withheld payments, and some of the payments it made, were unlawfully billed under the tariffs and/or the FCC's rules. AT&T denies the remaining allegations in this paragraph.

102. Defendant has breached the CEA Tariff by failing to fully pay the CEA Tariff prices for the CEA service that Plaintiff provided to Defendant.

RESPONSE: AT&T denies the allegations in this paragraph.

103. Plaintiff has lost the value of the use of the money owed but not paid for CEA service.

RESPONSE: AT&T denies the allegations in this paragraph.

104. The CEA Tariff requires the payment of late payment penalties on past due amounts. *See* Exhibit B, Original Page 41.

RESPONSE: To the extent that the allegations in this paragraph purport to characterize the tariff, AT&T respectfully refers the Court to the tariff for an accurate and complete statement of its contents, and AT&T denies all inconsistent allegations. AT&T denies the remaining allegations in this paragraph.

105. The CEA Tariff requires Defendant to pay damages (direct, consequential, and punitive), attorneys' fees, and court costs incurred by Plaintiff due to "any act or omission of the customer in the course of using services provided under this tariff." *See* Exhibit B, Original Page 31.

RESPONSE: To the extent that the allegations in this paragraph purport to characterize the tariff, AT&T respectfully refers the Court to the tariff for an accurate and complete statement of its contents, and AT&T denies all inconsistent allegations. AT&T denies the remaining allegations in this paragraph.

106. Plaintiff is also entitled to recover its reasonable attorneys' fees pursuant to Section 206 of the Communications Act, 47 U.S.C. § 206. *MCI Telecommunications Corp. v. Teleconcepts, Inc.*, 71 F.3d 1086, 1102 (3rd Cir. 1995).

RESPONSE: AT&T denies the allegations in this paragraph.

107. Plaintiff has been damaged and continues to be damaged by Defendant's refusal to pay the CEA Tariff prices. Plaintiff is entitled to recover damages (direct, consequential, and punitive), late payment interest, attorneys' fees, costs of suit, and such other relief as may be established at trial.

RESPONSE: AT&T denies the allegations in this paragraph.

COUNT II

108. Plaintiff incorporates and re-alleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

RESPONSE: AT&T reincorporates its responses to the allegations of paragraphs 1 to 107 of the Complaint. AT&T denies any and all remaining allegations contained in paragraphs 1 through 107 not previously admitted.

109. Plaintiff provided CEA service to Defendant.

RESPONSE: AT&T denies that INS provided AT&T with services pursuant to a valid or effective tariff, and thus AT&T denies the allegations in this paragraph.

110. The rates, terms and conditions applicable to CEA service are contained in Plaintiff's tariffs filed with the Nebraska Public Service Commission and the Iowa Utilities Board. Copies of those tariffs are attached as Exhibits C and D.

RESPONSE: AT&T admits that rates, terms, and conditions pertaining to INS's service are contained in its tariffs filed with the Nebraska Public Service Commission and the Iowa Utilities Board, and that Exhibits C and D to the Complaint are purported copies of those tariffs. AT&T denies that these tariffs are lawful, and AT&T denies the remaining allegations in this paragraph.

111. As a matter of statutory law, Defendant is required to pay the prices contained in the CEA Tariffs. Iowa Code § 476.5; Neb. Rev. Stat. § 75-126(1)(e).

RESPONSE: AT&T denies the allegations in this paragraph.

112. Defendant has received invoices from Plaintiff billing the prices for CEA service contained in the CEA Tariffs.

RESPONSE: AT&T admits that it has received invoices from INS for its purported CEA service. AT&T denies that the invoices are accurate, lawful, or properly billed under applicable law and/or valid and effective tariffs. AT&T denies the remaining allegations in this paragraph.

113. Defendant has failed to fully pay the invoices Defendant has received from Plaintiff for CEA service.

RESPONSE: AT&T admits that it made certain payments to INS and withheld certain other payments; the withheld payments, and some of the payments it made, were unlawfully billed under the tariffs and/or the FCC's rules. AT&T denies the remaining allegations in this paragraph.

114. The existence of a billing dispute does not excuse Defendant from paying the tariff rates. The CEA Tariffs require Defendant to pay both the disputed and undisputed portions of INS' invoices. "[T]he customer will, notwithstanding the continuing existence of the dispute, pay the billed amount." *See* Exhibit C, Original Page 42; Exhibit D, Original Page 59.

RESPONSE: To the extent that the allegations in this paragraph purport to characterize the tariffs, AT&T respectfully refers the Court to the tariffs for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. AT&T denies the remaining allegations in this paragraph.

115. Defendant has breached the CEA Tariffs by failing to fully pay the CEA Tariff prices for the CEA service that Plaintiff provided to Defendant.

RESPONSE: AT&T denies the allegations in this paragraph.

116. Plaintiff has lost the value of the use of the money owed but not paid for CEA Service.

RESPONSE: AT&T denies the allegations in this paragraph.

117. The CEA Tariffs require the payment of late payment penalties on past due amounts. *See* Exhibit C, Original Page 65; Exhibit D, Original Page 83.

RESPONSE: To the extent that the allegations in this paragraph purport to characterize the tariffs, AT&T respectfully refers the Court to the tariffs for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. AT&T denies the remaining allegations in this paragraph.

118. The CEA Tariffs require Defendant to pay damages (direct, consequential, and punitive), attorneys' fees, and court costs incurred by Plaintiff due to "any act or omission of the

customer in the course of using services provided under this tariff." *See* Exhibit C, Original Page 48; Exhibit D, Original Page 66; *see also, MCI Telecommunications Corp. v. Teleconcepts, Inc.*, 71 F.3d at 1102.

RESPONSE: To the extent that the allegations in this paragraph purport to characterize the tariffs, AT&T respectfully refers the Court to the tariffs for an accurate and complete statement of their contents, and AT&T denies all inconsistent allegations. AT&T denies the remaining allegations in this paragraph.

119. Plaintiff has been damaged and continues to be damaged by Defendant's refusal to pay the CEA Tariff prices. Plaintiff is entitled to recover damages (direct, consequential, and punitive), late payment interest, attorneys' fees, costs of suit, and such other relief as may be established at trial.

RESPONSE: AT&T denies the allegations in this paragraph.

AT&T's PRAYER FOR RELIEF

AT&T denies that Plaintiff is entitled to any relief.

AFFIRMATIVE DEFENSES

AT&T asserts the following additional defenses without assuming the burden of proof on such defenses that would otherwise rest on Plaintiff and reserves its right to assert additional defenses when, and if, appropriate.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

Plaintiff's claims are barred in whole or in part by its inequitable conduct and unclean hands.

THIRD DEFENSE

Plaintiff may not obtain relief under any federal or state tariff because Plaintiff is in violation of such tariffs.

FOURTH DEFENSE

Plaintiff's claims for access charges are barred because Plaintiff did not provide such services.

FIFTH DEFENSE

Plaintiff's claims are barred because it has engaged in ongoing violations of the Communications Act, including, but not limited to, 47 U.S.C. §§ 201 and 203.

SIXTH DEFENSE

Plaintiff is estopped from making its claims.

SEVENTH DEFENSE

Plaintiff's claims include issues that are subject to the primary jurisdiction doctrine and that should be referred under that doctrine to relevant regulatory agencies.

WHEREFORE, AT&T requests an order entering judgment in its favor, denying Plaintiff any relief whatsoever, awarding AT&T its costs of suit incurred in the defense of this action, awarding AT&T its attorneys' fees incurred in the defense of this action, and granting AT&T such other and further relief as the Court may deem just and proper.

COUNTERCLAIMS OF AT&T CORP.

1. Defendant AT&T Corp. ("AT&T") for its counterclaims against plaintiff Iowa Network Services, Inc. ("INS") states as follows:

INTRODUCTION AND NATURE OF THE COUNTERCLAIMS

2. INS has filed tariffs with rates for switched access service that violate the rules of the Federal Communications Commission ("FCC"), and thus the Federal Communications Act ("Act"). INS then improperly billed AT&T for services at unlawful rates pursuant to the invalid tariffs, in violation of Sections 201 and 203 of the Communications Act and state law. As set

forth herein, AT&T's relief for INS's unlawful conduct includes damages in the form or refunds of amounts that INS unlawfully billed and that AT&T paid, and declaratory relief that the amounts that INS unlawfully billed and that AT&T disputed and declined to pay are not lawfully owed to INS.

3. In 2011, the FCC completed a decade-long inquiry and comprehensively reformed its rules for intercarrier compensation, including rules for the switched access services that INS has billed to AT&T. Most relevant to this dispute, the FCC implemented transitional rules that, among other things, are expressly designed to apply to compensation for any telecommunications traffic exchanged between telecommunications providers, including interstate switched access services, the services at issue here. *See* 47 C.F.R. § 51.901(b). Under the new rules, the rates for switched access services are generally capped at levels that were in place on December 29, 2011. *Id.* §§ 51.901 *et seq.*; Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of Connect America Fund*, 26 FCC Rcd. 17663 (rel. Nov. 18, 2011) ("*Connect America Fund Order*").

4. Further, the FCC's rules required access providers like INS over time to reduce rates for intrastate access services (*i.e.*, services on calls originating and terminating in the *same* state) to the same level that is charged for interstate services (*i.e.*, services on calls originating in one state and terminating in a *different* state). INS has also violated those FCC rules: today in Iowa, INS's primary access service is priced at about 1.14 cents per minute for intrastate services, which is above the 0.819 cents per minute at which its interstate services should be priced (the interstate rate that INS had in place on December 29, 2011).

5. The FCC's clear intent was to subject *all* access services to its new rules – and it did so. *See, e.g., Connect America Fund Order*, ¶ 801 ("*[A]ll* interstate switched access . . . rates

will be capped at rates in effect as of the effective date of the rules); *id.* ¶ 800 (capping "*all* interstate switched access rates in effect as of the effective date of the rules, including . . . *all transport rates*") (emphases added in both quotes). Yet INS – which has charged and provided access services for over 25 years – now claims that it is not subject to these rules. Based on this position, in 2013, INS raised the rates applicable to the primary switched access services it provides by over 40 percent, and to rates above those it had in place at the end of 2011. Because the increase contravenes the FCC's rules, INS's tariff itself violates the FCC's rules, and it should never have been filed containing unlawful and unreasonable rates.

6. Because the FCC had already said that INS should not file rates above the cap (and should reduce its intrastate rates), there is no merit to INS's claims that its unjust and unreasonable rates became "deemed lawful" under 47 U.S.C. § 204(a)(3) merely because the FCC did not immediately suspend INS's tariffs. The FCC does not need to suspend rates that it has already said are unlawful.

7. Moreover, even if INS's rates were lawful, INS has engaged in additional unreasonable practices that violate Section 201(b) of the Act. INS was created in the 1980s for the purpose of lowering the costs of transporting calls between long distance carriers (also known as interexchange carriers or "IXCs") and rural independent incumbent local exchange carriers ("LECs") serving distant exchanges in Iowa. Because the traffic volumes between any one of those remote LECs and any long distance carrier were then very small, establishing direct connections between a rural Iowa ILEC and an IXC was thought to be prohibitively expensive. Accordingly, INS was created to deploy a fiber ring around Iowa, and the costs of transporting traffic to the distant exchanges would be reduced because INS should have economies of scale.

8. Since the 1980s, the telecommunications industry and the law governing it have changed dramatically. Congress revised the Communications Act in 1996 to foster local competition for access services and other local telephone services. Among other things, Congress allowed new entrants (called competitive local exchange carriers, or "CLECs") to compete against incumbent LECs ("ILECs"). Existing local exchange carriers (including INS and other ILECs) would be subject to competition, and could not insist that customers use their services exclusively.

9. While competition developed and new carriers and services entered the market, the FCC's system of intercarrier compensation that set the rates which carriers would pay to one another became outdated, and when the FCC reformed its rules in 2011, it explained that its then-existing rules were "riddled with inefficiencies and opportunities for wasteful arbitrage." *See Connect America Fund Order*, ¶ 9.

10. One of the most prevalent arbitrage schemes, called "access stimulation," involved INS and many Iowa LECs. Under this scheme, a remote LEC that was permitted to charge high rates for access services under the FCC's rules (which were established under the view that the LEC would experience low traffic volumes and sometimes higher costs) would partner with a company to promote free calling services to the LEC. As a result of the free calling services, the traffic destined for the distant exchanges increased exponentially. IXCs would have to carry these large volumes of traffic to the traffic-pumping LECs – and the traffic typically would be routed over INS's transport ring. *See generally id.* ¶¶ 656-67.

11. As a consequence of these access stimulation schemes, LECs in remote parts of Iowa would suddenly handle tremendous volumes of traffic. For example, one LEC in Iowa operating in and around the small town of Spencer, Iowa, now carries about *nine times* the

volume of traffic handled by Qwest/Century Link, the traditional large ILEC, in all of Iowa. In these circumstances, it is no longer economically efficient for IXCs like AT&T to pay INS per minute rates to carry these large volumes of calls to access stimulating LECs. Indeed, the FCC's new 2011 rules were designed to ensure that IXCs' rates for such traffic would be dramatically reduced. Yet, because of INS's charges, AT&T is paying charges that exceed what the FCC intended under its new rules.

12. INS, and the Iowa LECs engaged in access stimulation, have engaged in unreasonable practices by: (1) conspiring to refuse to allow AT&T to use more efficient means to transport the access stimulation traffic, such as a direct connection with the LEC, and (2) insisting that AT&T route its traffic through INS. Any such exclusive arrangements are unreasonable and anticompetitive. For these violations, AT&T is entitled to damages, and to declaratory and injunctive relief.

JURISDICTION AND VENUE

13. This Court has original jurisdiction over AT&T's counterclaims under 28 U.S.C. §§ 1331, 1337, and 47 U.S.C. §§ 206 and 207, because AT&T's claims arise under the Federal Communications Act ("Act"), a law of the United States, and because AT&T's claims allege that INS, acting in its capacity as a common carrier under the Act, has violated the Act.

14. Venue is proper in this jurisdiction under 28 U.S.C. § 1391(b)(2)-(3). Additionally, to the extent that venue is proper in this action for the Complaint, venue remains proper.

PARTIES

15. Defendant/Counterclaim-Plaintiff AT&T is a New York corporation that provides communications and other services to U.S.-based and foreign-based customers, and has its

principal place of business in Bedminster, New Jersey. AT&T is a wholly owned subsidiary of AT&T Inc. In this case, AT&T's counterclaims and defenses relate to its role as a purchaser of services, not as a common carrier providing services.

16. AT&T has standing to bring these counterclaims under Sections 206 and 207 of the Communications Act because it has been damaged by actions taken by INS, a common carrier under the Act, in violation of the Act. Among other things, AT&T's current estimates are that it has paid INS millions of dollars in switched access charges that INS has improperly billed pursuant to the unreasonable practices, alleged in more detail below, in which INS has engaged, in violation of Section 201(b) of the Communications Act.

17. Plaintiff/Counterclaim-Defendant INS is, upon information and belief, incorporated in the state of Iowa, with its principal place of business in West Des Moines, Iowa. For purposes of this case, INS is operating as a common carrier that is subject to the Communications Act, 47 U.S.C. §§ 151 *et seq.* INS is a telecommunications provider.

BACKGROUND

18. To place AT&T's Counterclaims in perspective, it is helpful to discuss (1) the access services at issue; (2) INS's formation; (3) INS's call routing and pricing; (4) the "access stimulation" traffic that comprises most of INS's current traffic; (5) the FCC's *Connect America Fund Order*, which put in place rules to reduce rates for access stimulation traffic, and also more generally revised intercarrier compensation, including the use of "caps" for access services; and (6) AT&T's disputes of INS's unlawful tariffs and charges.

1. Access Services

19. Telephone calls and other telecommunications services often involve multiple service providers. In such cases, the FCC oversees a complex scheme of intercarrier compensation that applies when carriers exchange traffic. The amount of compensation one

provider owes another – if any – depends upon various factors, such as the type of service providers handling the call, the technology used, and how the call is routed. As the FCC has recognized, the intercarrier compensation system has been inefficient and prone to abuse. *Connect America Fund Order*, ¶¶ 9, 33, 648.

20. Switched access services are one type of intercarrier compensation. At the most basic and general level, local exchange carriers ("LECs") offer switched access services, which allow long distance carriers (IXCs) to originate and terminate long distance calls to end user customers (*i.e.*, calling and called parties). The LECs provide the switched access services pursuant to either tariffs or express contracts. A LEC can be classified generally as either an "incumbent" LEC, which is the traditional provider of telephone services in a local exchange, or a "competitive" LEC, which is a new entrant to the local telephone market that should compete with incumbent LECs.

21. To take a simple example, on a traditional long distance call, a caller places a call (from say, Des Moines, Iowa) to reach a friend in another state (say, in Chicago, Illinois). The caller's local Iowa phone company accepts the outgoing call at a local switch that connects to the caller's premises to its network, carries the call over the local network, and eventually hands off the call in or near Des Moines to the caller's selected long distance company. The long distance company (*i.e.*, the IXC) carries the call over its national network to a location near Chicago, and hands it off to a local phone company (a LEC) near Chicago that serves the called party. That Chicago LEC routes the call over its local network, including to a local "end office" switch that is directly connected to the called party's premises in Chicago, and the long distance call is completed.

22. In this example, where only three providers are involved, the LEC that originated the call from the caller's premises over the LEC's local switching and other facilities in Des Moines will generally assess "originating" switched access charges on the IXC. Similar types of charges will be billed to the IXC for the "terminating" end of the call, by the LEC in Chicago that is involved in routing and carrying the call over its local switch and facilities in Chicago to the called party's premises.

23. Like other telephone services, access services can be classified as interstate or intrastate in nature. On a long distance call that begins in one state and ends in another state (like the example above), any access services provided on the call are interstate services. Such services are generally regulated by the FCC. On a long distance call that begins and ends in the same state, any access services are intrastate services. Traditionally, such services have been regulated by state regulatory commissions, but as discussed below the FCC has recently imposed some rules applicable to intrastate access services.

24. Switched access services typically consist of various functional components, called "rate elements." For example, switched access service may include rate elements for "transport" (generally speaking, the function of carrying calls over wires, known as "trunks") and for "switching" (generally speaking, the function of routing calls in various directions), among other things. Additionally, some rate elements are associated with "tandem" switching, which is a switch that is (as a general matter) connected to other switches, and others are associated with "end office" switches, which are the switches that place calls onto subscriber "loops" that are connected to the premises of callers.

25. The IXC's customers and the parties whom they call – and not the IXC itself – choose the LEC providing the switched access services. As a result, once an IXC's customer

chooses to take service from a particular LEC, the IXC that serves that customer must use the customer's chosen LEC to originate or terminate calls to the IXC's network. Thus, even if the IXCs are very large companies, and even if the LECs are relatively small and/or are supposedly "competitive" LECs, these LECs have a "bottleneck" monopoly over the IXCs as to the traffic they handle. *See, e.g.*, *CLEC Access Charge Order*, 16 FCC Rcd. 9923, ¶ 30 (2001).

26. The most basic scenario of an IXC establishing a "direct connection" with a LEC, which is described above, is used in locations where the IXC and the LEC exchange large volumes of traffic. However, long distance calls are not always routed according to this most basic scenario, and often other carriers or service providers are involved.

27. For example, for smaller LECs, there is often insufficient traffic to justify a direct connection to and from a particular IXC's network. In that instance, the carriers may exchange traffic indirectly through other providers.

28. Of particular relevance to this case is a type of calling arrangement that was approved for use in Iowa and a few other states in the 1980s, when competition for long distance services was developing. In this arrangement, long distance traffic is exchanged indirectly by using a "centralized equal access" ("CEA") provider. Because it was true that each remote ILEC would not have enough traffic volume to connect directly with each competing IXC, certain remote ILECs decided to form and own a CEA provider to haul commingled access traffic on their behalf. The CEA provider would achieve economies of scale by handling larger volumes of access traffic than any single carrier, thereby reducing access rates, which resulted in lower rates for IXCs and their customers. In fact, in approving these arrangements, the FCC determined that the express purpose and benefit of CEA arrangements are "lower costs to IXCs" due to the efficiencies associated with fiber rings. *See, e.g.*, *In re Application of Indiana Switch Access*

Div., 1986 WL 291436, ¶ 23 (C.C.B. Apr. 10, 1986) ("*Indiana Switch Order*"), *review denied, Indiana Switch*, 1 FCC Rcd. 634 (1986); *Application of Iowa Network Access Division*, 3 FCC Rcd. 1468, ¶ 3 (C.C.B. 1988) ("*INAD Application Order*").

2. INS's Formation

29. In Iowa, INS provides CEA and other access services. INS was formed in 1987 by about 130 rural LECs, in order to provide transport and other access services on behalf of the rural LECs. INS sought and received authority under Section 214 of the Communications Act to provide CEA service as "a dominant carrier providing exchange access services." *INAD Application Order*, 3 FCC Rcd. at 1468.

30. In the 1980s, years prior to the passage of the Telecommunications Act of 1996, which opened local telephone markets to competition, there was only a single provider of local telephone service in a given area. There were no "competitive" LECs at that time.

31. Additionally, at that time, the prices for services (including access services) offered by these LECs were determined exclusively by traditional "rate of return" regulation, which examined a carrier's reasonable costs and demand, and then rates were set to achieve a reasonable rate of return. The FCC and other regulatory commissions would in the future develop additional methods to regulate prices for access service prices, but when INS was formed in 1987, it (like the LECs that formed it) was subject to rate of return regulation. As explained below, that remains true today.

32. After being approved for operation, INS constructed and has deployed tandem switching and transport facilities in order to offer equal access, on behalf of rural Iowa incumbent LECs, to multiple competitive IXCs at a single, centralized location. INS operates a centralized tandem switch in Des Moines that provides tandem switching and equal access

functionality, and deployed a fiber optic "ring" that connects the tandem switch to various locations spread throughout Iowa to transport traffic between long distance carriers and certain small, rural LECs. *INAD Application Order*, 3 FCC Rcd. at 1468.

33. In short, INS was formed by Iowa LECs, is still owned largely by Iowa incumbent LECs, and offers and provides exchange access services, including tandem switching and transport, on behalf of LECs. INS thus is and always has been a rate of return regulated LEC.

3. INS's Call Routing And Pricing

34. Since the INS network was put in place, the call routing works as follows: when a customer of an IXC places a long distance call to a customer of one of the LECs that uses INS, the IXC carries the call over its network to INS's switch in Des Moines, and hands off the call to INS. INS then transports the call to a point on its fiber network that is close to the local facilities of the rural LEC. The rural LEC then picks up the call and transports it to the called party within its authorized local exchange. The same thing happens in reverse for a long distance call placed by a customer of the rural LEC.

35. Generally, INS charges the IXCs a flat, per-minute rate for each call, to cover the switching of the call in Des Moines and the transport of the call over the INS fiber network. INS's per-minute rate does not vary based on the distance that it carries the call.

36. At the end of 2011, INS's interstate rate for its centralized equal access service, which includes tandem switching and transport, was $0.08190 per minute. In the middle of June, 2012, INS reduced this interstate rate to $0.0623 per minute. In July, 2013, INS made revisions to its tariff, and raised the rate for this service to $0.08960, which is INS's current rate for this service. As to its intrastate rate for the service, INS's rate is $0.114 per minute.

4. Access Stimulation Schemes And The Tremendous Increase In Traffic In Iowa And On INS's Facilities.

37. The historically low volumes of long distance traffic to and from Iowa LECs connected to INS no longer exists today, as a result of what are called "access stimulation" or "traffic pumping" schemes. Under these access stimulation schemes, a rural LEC would partner with a company that provided free calling services. Many of these LECs were located in rural parts of Iowa, and were connected to INS's network.

38. As discussed above, *see supra* paragraph 11, these free calling services generate huge volumes of traffic. As a result, LECs in remote exchanges in Iowa (and in a few other states) would handle huge volumes of traffic, thereby exploding the volume of traffic that the long distance carriers transported to and from the LEC. For example, one LEC near Spencer, Iowa now carries approximately *nine times* the volume of traffic handled by Qwest/Century Link, the traditional carrier, in all of Iowa. Further, it carries all of this traffic with far fewer facilities (and thus far lower costs).

39. As a result of the access stimulation practices, the mix of traffic that INS carries has changed dramatically. Before access stimulation schemes became prevalent, nearly all (if not all) of the traffic INS transported involved an aggregation of generally very small volumes for each of the incumbent Iowa LECs connected to INS. Now, however, INS's traffic largely consists of traffic from so-called "competitive LECs" that are engaged primarily in access stimulation. Today, about 80 percent of INS's traffic is associated with access stimulation – meaning INS handles tremendous volumes of access stimulated traffic.

40. The FCC, as well as the Iowa Utilities Board, which regulates intrastate telecommunications services within Iowa, have each conducted investigations into access stimulation. In these investigations, both the FCC and IUB determined that LECs engaged in

traffic pumping had violated their tariffs and improperly billed long distance carriers like AT&T for access services on calls associated with the traffic pumping.[2]

41. The FCC and IUB also each conducted rulemaking proceedings. The FCC found that access stimulation was a "wasteful arbitrage schem[e]" with many "adverse effects." *Connect America Fund Order*, ¶¶ 648-49, 660; *id.* ¶¶ 662-665. The FCC further found that the practice "imposes undue costs on consumers," especially the "customers of long-distance providers," which must "bear the[] costs" of providing the free calling services, even though these consumers may not use those services. *Id.* ¶ 663. Accordingly, the FCC and the IUB issued new rules to curtail some of the harms associated with access stimulation. *See id.* ¶¶ 657-60, 667-700; *see also In re High Volume Access Service*, RMU-2009-009 (I.U.B. June 7, 2010).

5. The FCC's *Connect America Fund Order*

42. The FCC's rulemaking proceeding on access stimulation was a part of a larger order, known as the *Connect America Fund Order*. *Connect America Fund*, 26 F.C.C. Rcd. 17663 (2011), *petitions for review denied sub nom In re FCC 11-161*, 753 F.3d 1015, 2014 WL 2142106 (10th Cir. 2014). This order also instituted more general reforms in intercarrier compensation, including access charges, and in other areas. Most relevant here are the FCC's rules to curtail access stimulation and its transitional pricing rules for access services.

a. The FCC's Rules To Curtail Access Stimulation By Reducing Rates.

43. Under the new rules, a carrier engaged in access stimulation is required to file revised tariffs that reduce its rates. According to the FCC, such revised tariffs should

[2] *See, e.g.*, *Qwest Commc'ns* v. *Farmers & Merchants Tel. Co.*, 24 FCC Rcd. 14801 (2009), *recon denied*, 25 FCC Rcd. 3422 (2010), *pet. for review denied sub nom. Farmers & Merchants Tel. Co.* v. *FCC*, 668 F.3d 714 (D.C. Cir. 2011); *Qwest Commc'ns* v. *Superior Tel. Coop.*, 2009 WL 3052208, Docket No. FCU-07-2 (I.U.B. Sept. 21, 2009), *recon granted in part*, 2009 WL 4571832 (I.U.B. Dec. 3, 2009), *further recon denied.*, 2011 WL 459685 (I.U.B. Feb. 4, 2011), *aff'd*, 829 N.W.2d 190 (Iowa App. 2013).

"significantly reduce the rates charged by competitive LECs engaging in access stimulation, even if [the rules do] not entirely eliminate the potential for access stimulation." *Connect America Fund Order*, ¶ 690.

44. For competitive LECs – which are the LECs most commonly engaged in access stimulation today and which are responsible for most of the access stimulation traffic handled by INS – the FCC since 2001 generally has used a "benchmark" approach to rate regulation. Under this approach, competitive LECs may not file tariffs for switched access services unless the rates (and rate-affecting terms) are no higher than those of an incumbent LEC, as specified in the FCC's rules.

45. In its 2011 *Connect America Fund Order*, the FCC required competitive LECs engaged in access stimulation to use a new benchmark for tariffing their access services. Specifically, the FCC determined that, for a competitive LEC operating in a particular state, it was appropriate to use as a benchmark the LEC with the lowest access rates that is regulated according to the FCC's "price cap" rules. *Connect America Fund Order*, ¶¶ 689-90. This was because a competitive LEC engaged in access stimulation generally handled traffic volumes that were at least as high as the lowest-priced price cap LEC.

46. In short, under the FCC's new traffic pumping rules, IXCs (and, in turn, their customers) should not pay higher charges on access stimulation traffic than they would if such traffic were being handled by the lowest-priced price cap LEC in the state.

47. Despite these new rules, some LECs, including a number operating in Iowa and connected to INS, have not curtailed their traffic pumping. Accordingly, INS continues to handle very significant volumes of traffic pumping carriage. Further, INS has not filed revised

tariffs to comply with the access stimulation rules, even though most of its traffic is access stimulation traffic, and, as explained below, it is presumptively subject to those rules.

48. In addition, given the large volumes of traffic that some access stimulation LECs in Iowa are now handling, it is economically inefficient, and not necessary, to use INS's tandem and transport facilities in connection with competitive LECs handling significant amounts of access stimulated traffic.

49. In fact, as explained in more detail below, it is inconsistent with the FCC's access stimulation rules to use INS as a tandem and transport provider that is charging a fixed per minute rate on every minute of every call. On calls routed to traffic pumping competitive LECs in Iowa, AT&T ends up paying far more in access charges than it would if the calls were being handled by the lowest-priced price cap LEC in Iowa. Thus, AT&T and other IXCs should be able to use more efficient transport arrangements, instead of INS. INS has refused to allow or provide such arrangements.

b. The FCC's Transitional Access Service Rules.

50. The FCC's *Connect America Fund Order* (*e.g.*, ¶¶ 798-807) also adopted transitional pricing rules for access services. These rules began to apply on December 29, 2011, and will be in effect for several years, until the FCC implements a new "bill and keep" mechanism for certain switched access services.

51. As relevant here, the transitional pricing rules include a "cap" on switched access rates, so that LECs cannot raise those rates above the levels that existed on the effective date of the new rules, December 29, 2011. *Connect America Fund Order*, ¶¶ 798, 800, 801. The caps apply to all interstate switched access services, including, of course, the interstate access services

provided by INS. *Id.* ¶ 801 ("at the outset of transition, all interstate switched access rates . . . will be capped.").

52. The FCC's transition rules also regulate certain intrastate access services. In general, the FCC's rules require LECs gradually to reduce the rates of their intrastate terminating access services to levels no higher than their interstate rates. *See id.* ¶ 801.

53. As explained below, despite these rules, INS has raised its rates above the caps, and also has not reduced its intrastate rates.

6. AT&T's Disputes With INS

54. After INS filed tariffs with rates that exceeded the caps in the FCC's rules, AT&T disputed INS's billed access services charges, pursuant to the billing dispute provisions in INS's tariff. *See, e.g.*, INS Tariff F.C.C. No. 1, § 2.4.1(B)(2)(c). AT&T also began withholding payment on some of the access charges improperly billed by INS. AT&T continues to pay INS some of the amounts it has billed, based on AT&T's own internal estimates of what INS might be able to bill properly if it had filed lawful tariffs and if it was properly providing its services.

55. However, AT&T has paid INS millions of dollars in switched access services on traffic associated with access stimulation. In those circumstances, INS's tandem and transport services are not necessary and/or are inefficient, and yet INS has asserted that it has the exclusive right to tariff, bill, and collect for such access services. Because, as explained herein, INS's actions are unlawful, unjust, and unreasonable under the Communications Act, AT&T is entitled to refunds of amounts that INS has improperly billed to AT&T, and that AT&T has paid.

I. INS HAS UNLAWFULLY CHARGED AT&T, AND AT&T HAS PAID INS, RATES THAT EXCEED THE FCC'S TRANSITIONAL ACCESS SERVICE RULES.

A. INS's Tariff Rates Violate the FCC's Transitional Access Service Rules and Are Unlawful.

56. The rates that INS has charged AT&T for access services are unlawful because they exceed the rates established in the FCC's Transitional Access Service Rules, which were promulgated in the FCC's *Connect America Fund Order* and are codified at 47 C.F.R. Part 51, Subpart J (the "Transitional Access Service Rules").

57. In 2013, INS increased its rates for centralized equal access services by over 40 percent, and above the levels that existed as of the effective date of the FCC's Transitional Access Service Rules.

58. INS's interstate rate for centralized equal access service on December 29, 2011, the effective date of the Transitional Access Service Rules, was $0.0819 per minute. After an initial decrease in the rate, INS raised the interstate rate for this service in July, 2013 to $0.0896. INS's rate for its CEA service, which is a switched access service subject to the FCC's Rules, thus violates the FCC's rate caps.

59. Additionally, INS has not reduced its terminating intrastate access rates to be equal to its terminating interstate rates, in violation of the FCC's rules. INS has imposed, and continues to impose, these unlawful rates on AT&T.

60. The FCC's Transitional Access Service Rules apply to "telecommunications traffic exchanged between telecommunications providers that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access." 47 C.F.R. § 51.901(b). "Exchange access" means "the offering of access to telephone exchange

services or facilities for the purpose of the origination or termination of telephone toll services." 47 U.S.C. § 153 (20).

61. INS provides interstate and intrastate exchange access services within the meaning of the FCC's Rules. INS has previously admitted that it provides exchange access services in court filings. *See, e.g.*, *Opening Br. of Pl. Iowa Network Servs Inc. In Opp. to Mot. of Quest Corp. for Summ. J.* in *Iowa Network Servs., Inc. v. Qwest Corp.*, No. 02-cv-40156 (S.D. Iowa Aug. 11, 2004) ("INS provides exchange access in conjunction with the many rural LECs which formed INS. . . . . Because INS provides exchange access, it is a LEC.").

62. Because INS is a telecommunications provider that provides interstate and intrastate "exchange access," INS is subject to the FCC's Transitional Access Service Rules.

63. The Transitional Access Service Rules contain specific rules pertaining to, *inter alia*, rate-of-return carriers (§51.909) and competitive LECs (§51.911). INS is barred from contending that it is not subject to the rules governing rate-of-return carriers. In the alternative, if INS is not a rate-of-return carrier, then INS is subject to the price cap rule governing CLECs.

1. INS Is a Rate-of-Return Carrier That Is Subject to the Transitional Access Service Rules.

64. Since its formation, INS has always been, and continues to be, a rate-of-return LEC that provides "exchange access" including switched access services and CEA services. When the FCC first authorized INS to provide services, it explained that INS was "a dominant carrier providing exchange access services subject to Title II regulations." *Application of INAD*, 3 FCC Rcd., ¶ 10 (1988). At that time, the only way to regulate dominant carriers was through traditional rate-of-return regulation. Thus, INS was a rate-of-return carrier.

65. Since that inception, INS has operated, and has consistently been treated by the FCC, as subject to rate-of-return regulation. For example, INS has long filed rates for its access

services pursuant to Rule 61.38 of the FCC's rules. 47 C.F.R. § 61.38. *See* Compl. ¶ 54 (stating that INS files under 47 C.F.R. § 61.38).

66. As recent FCC orders confirm, the entities that now file access service tariffs according to Rule 61.38 are rate-of-return, incumbent local exchange carriers.[3] Thus, by filing under Section 61.38, INS has represented to the FCC that is it a rate-of-return carrier.

67. In fact, INS has itself made regulatory filings, along with other centralized equal access providers in other states, in which INS has stated that "[t]he CEA providers *are regulated on a rate-of-return basis*." Comments of the Equal Access Service Providers, WC Docket No. 05-337, at 2 (filed Nov. 26, 2008). This filing was signed by "Richard Vohs," who was identified as the President of INS.

68. In reliance on INS's identification of itself as a Section 61.38 rate-of-return carrier, the FCC has permitted INS to file tariffs for access services, without undertaking the burdens associated with a full-blown cost case (in such a case, the FCC would scrutinize particular expenditures as reasonable). INS has, in turn, received reciprocal benefits from its rate-of-return classification, including filing tariffs that did not require a full-blown cost case, and collecting millions of dollars in access services under those filed tariffs.

69. INS now attempts to assert that "it is not an incumbent local exchange carrier" and "is not a Rate-of-Return Carrier." Compl. ¶¶ 77. However, having long received benefits

[3] *See, e.g.*, *In re FCC 11-161*, 753 F.3d 1015, 2014 WL 2142106, at *109 (10th Cir. 2014) (stating "ILECs can obtain relief from rate adjustments by submitting cost studies under 47 C.F.R. § 61.38"); *Direct Commc'ns Cedar Valley v. FCC*, 2014 WL 3338841, at *63 (FCC July 7, 2014) (explaining that section 61.38 "called for incumbent LECs to file tariffs supported by cost-of-service data"); *In re July 1, 2014 Annual Access Charge Tariff Filings*, 29 FCC Rcd. 3133, *1, n.2 (Mar. 25, 2014) (establishing "procedures for filing of annual access charge tariffs . . . for . . . rate of return ILECs subject to sections 61.38 and 61.39" and noting that 47 C.F.R § 61.38 applies to "rate of return carriers that file tariffs based on projected costs and demand"); *Connect America Fund Order*, ¶ 684 ("Rate of Return Carriers Filing Tariffs Based On Projected Costs and Demand: Section 61.38."); *In re July 3, 2012 Annual Access Charge Tariff Filings*, 27 FCC Rcd 7322, 7327 n.2 (F.C.C. 2012) ("These tariffs were filed pursuant to . . . section 61.38 for rate-of-return LECs.").

from its rate-of-return classification, INS cannot now disclaim that classification in an attempt to avoid the recently imposed negative consequences of such a classification -- *i.e.*, being subject to the *Connect America Fund Order* rules.

70. Because INS is a rate-of-return carrier, it is subject to the rule governing rate-of-return carriers in the Transitional Access Service Rules. 47 C.F.R. § 51.909 ("Transition of rate-of-return carrier access charges"). That rule provides that

> (a) Notwithstanding any other provision of the Commission's rules, on December 29, 2011, a Rate-of-Return Carrier shall:
>
> (1) cap the rates for all elements of services. . . contained in the definitions of End Office Access Service, Tandem Switched Transport Access Service, and Dedicated Transport Access Service, as well as all other interstate switched access rate elements, in its interstate switched access tariffs at the rate that was in effect on the December 29, 2011; and

47 C.F.R. § 51.909.

71. That rule also provides that INS should gradually reduce its intrastate access services rates. *Id.* § 51.909(b)-(d).

72. INS plainly violated Rule 51.909 by failing to reduce its tariffed intrastate access rates, and by charging rates in its tariff above the price caps established in the Transitional Access Service Rules. INS's rates were therefore unlawful.

2. In the Alternative, If INS Is Not a Rate-of-Return Carrier, It Is a CLEC, And CLECs Are Also Subject to the Transitional Access Service Rules.

73. To the extent that INS is not found to be a rate-of-return carrier for the purposes of the Transitional Access Service Rules, then, in the alternative, AT&T avers that INS is a competitive LEC, or CLEC. CLECs, like all carriers providing access services, are also subject to the Transitional Access Service Rules. *See Connect America Fund Order*, ¶¶ 798, 800-01; 47 C.F.R.§ 51.911. Accordingly, if INS is not a rate-of-return carrier (as it argues), then it must be

a competitive LEC within the meaning of the FCC's Transitional Access Service Rules and is thus charging unlawful rates in its tariff.

74. Under Section 51.903 of the Transitional Access Service Rules, a "CLEC" is "any local exchange carrier, as defined in § 51.5, that is not an incumbent local exchange carrier." 47 C.F.R. § 51.903(a). Section 51.5, in turn, defines "local exchange carrier" as "any person that is engaged in the provision of telephone exchange service or exchange access." 47 C.F.R. § 51.5.

75. There is no question that INS provides "exchange access" and is therefore a LEC. Indeed, INS itself has admitted as much. *See Opening Br. of Pl. Iowa Network Servs. Inc. in Opp'n to Mot. of Quest Corp. for Summ. J.* in *Iowa Network Servs., Inc. v. Qwest Corp.*, No. 02-cv-40156 (S.D. Iowa Aug. 11, 2004) ("INS provides exchange access in conjunction with the many rural LECs which formed INS. . . . . Because INS provides exchange access, it is a LEC."). At least one court has agreed that INS is a LEC. *Iowa Network Servs. v. Qwest Corp.*, 385 F. Supp. 2d 850, 897 (S.D. Iowa 2005) ("INS is, however, an LEC.").

76. Under the definition of "CLEC" in Section 51.903, a LEC is either an ILEC or a CLEC. 47 C.F.R. § 51.903(a). Thus, because INS is a LEC, if (as INS argues) it is not an ILEC rate-of-return carrier, then it must be a CLEC for the purposes of the Transitional Access Service Rules.

77. CLECs are subject to the FCC's Transitional Access Service Rules. *See Connect America Fund Order*, ¶¶ 800-01; 47 C.F.R. § 51.911. Section 51.911 states:

> (a) Caps on Access Reciprocal Compensation and switched access rates. Notwithstanding any other provision of the Commission's rules:
>
> (1) In the case of Competitive LECs operating in an area served by a Price Cap Carrier, *no such Competitive LEC may increase the rate for any originating or terminating intrastate switched access service above the rate for such service in effect on December 29, 2011.*

> (2) In the case of Competitive LEC[s] operating in an area served by an incumbent local exchange carrier that is a Rate-of-Return Carrier or Competitive LECs that are subject to the rural exemption in § 61.26(e) of this chapter, *no such Competitive LEC may increase the rate for any originating or terminating intrastate switched access service above the rate for such service in effect on December 29, 2011*, with the exception of intrastate originating access service. For such Competitive LECs, intrastate originating access service subject to this subpart shall remain subject to the same state rate regulation in effect December 31, 2011, as may be modified by the state thereafter.

47 C.F.R. § 51.911(a) (emphases added). INS, as a CLEC, is thus subject to the FCC's price cap.

78. However, INS has filed tariffs with rates that exceed the price caps in the FCC's Transitional Access Service Rules.

79. In addition, the Transitional Access Service Rules applicable to CLECs also require them to reduce intrastate switched access rates gradually over time. 47 C.F.R. § 51.911(b). INS has not reduced its rates for intrastate switched access services.

80. INS's tariffs and rates are therefore unlawful.

C. In the Alternative, If INS Is Neither a Rate-of-Return Carrier Nor a CLEC, Then It Was Not Entitled to Tariff Access Services At All, And Is Not Entitled To Any Recovery.

81. As explained above, the services that INS has tariffed and billed to AT&T are switched access services, or "exchange access." 47 U.S.C. § 153(20) (defining "exchange access" as the "offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services").

82. As detailed above, under the FCC's rules and under the Act, any entity that provides access services is a LEC. *See* 47 U.S.C. § 153 (defining "local exchange carrier" as "any person that is engaged in the provision of telephone exchange service or exchange access");

47 C.F.R. § 51.5 (same). Any LEC providing access service must be either an ILEC or a CLEC. *See* 47 C.F.R. 61.26(a); *see also* 47 C.F.R. § 51.903(a) (same).

83. If INS is neither an ILEC rate-of-return carrier nor a CLEC, then it is not authorized to provide regulated switched access services under the Act and the FCC's rules. Accordingly, INS was not eligible to file the tariff for access services, pursuant to which it has charged AT&T, and it is not entitled to recover for services it provided pursuant to that unlawful tariff.

II. INS ENGAGES IN "ACCESS STIMULATION" UNDER THE FCC's RULES, BUT HAS UNLAWFULLY FAILED TO FILE A REVISED TARIFF AS PROVIDED IN THOSE RULES.

84. INS's charges to AT&T are unlawful on additional grounds: according to AT&T's analysis of the relevant bills, INS is presumptively engaged in "access stimulation" under the FCC's rules, and thus it was required to file revised tariffs pursuant to those rules. However, INS failed to make these required filings.

85. As discussed above, in 2011, the FCC issued rules to curtail "access stimulation," finding that when LECs enter into arrangements that result in "significant increases in access traffic with unchanged access rates," the result is "inflated profits" and rates that "almost uniformly" are "unjust and unreasonable under Section 201(b) of the Act." *Connect America Fund Order*, ¶ 657. To curtail the numerous "adverse effects of access stimulation," the FCC required LECs that engage in access stimulation to file revised tariffs with lower rates. *Id.* ¶¶ 667, 679.

86. The FCC's definition of "access stimulation" entails two conditions. The first is that a LEC has "either an interstate terminating-to-originating traffic ratio of at least 3:1 in a calendar month, or has had more than a 100 percent growth in interstate originating and/or

terminating switched access minutes of use in a month compared to the same month in the preceding year." 47 C.F.R. § 61.3(bbb)(1)(ii).

87. INS satisfies this first condition. For example, in its most recent bills to AT&T in July 2014, INS's billed minutes for terminating interstate switched access services were *more than 30 times* the volume of originating interstate switched access services – far in excess of the FCC's 3:1 trigger. INS's terminating to originating traffic ratios to AT&T were similar in prior months.

88. The second condition of "access stimulation" is the existence of an "access revenue sharing agreement," which is an agreement:

> [W]hether express, implied, written or oral, that, over the course of the agreement, would directly or indirectly result in a net payment to the other party (including affiliates) to the agreement, in which payment by the rate-of-return local exchange carrier or Competitive Local Exchange Carrier is based on the billing or collection of access charges from interexchange carriers or wireless carriers. When determining whether there is a net payment under this rule, all payments, discounts, credits, services, features, functions, and other items of value, regardless of form, provided by the rate-of-return local exchange carrier or Competitive Local Exchange Carrier to the other party to the agreement shall be taken into account.

47 C.F.R. § 61.3(bbb)(1)(i).

89. As the FCC has explained, its rule "focuses on revenue sharing that would result in a net payment" from the LECs to the other entity. *Connect America Fund Order*, ¶ 670. Because the precise nature of any revenue sharing arrangements is generally not known by the IXCs, the FCC held that a "complaining carrier may rely on the 3:1 terminating-to-originating traffic ratio and/or the traffic growth factor for the traffic it exchanges with the LEC as the basis for filing a complaint. This creates a rebuttable presumption that revenue sharing is occurring and that the LEC has violated the FCC's rules. The LEC then has the burden of showing that it does not meet both conditions of the definition." *Id.* ¶ 699.

90. Because AT&T's records show that INS meets the 3:1 ratio, there is a rebuttable presumption that there is a revenue sharing agreement, thus satisfying the second condition of the FCC's definition of access stimulation.

91. Unless INS successfully rebuts the presumption under the FCC's rules, then it has engaged in access stimulation. As such, INS was required to file new tariffs after it began engaging in access stimulation. Because INS did not file revised tariffs when it was obligated to do so, INS cannot collect access charges under its unlawful tariffs.

III. INS HAS ENGAGED IN UNJUST AND UNREASONABLE PRACTICES IN VIOLATION OF SECTION 201(b) OF THE COMMUINCATIONS ACT.

92. The Communications Act broadly proscribes common carriers, like INS, from engaging in any practices that are unreasonable or unjust. 47 U.S.C. § 201(b).

93. Even if INS were billing rates that are consistent with the FCC's rules, which AT&T disputes, INS has engaged in unjust and unreasonable practices within the meaning of Section 201, which have caused significant damage to AT&T.

A. INS Has Unreasonably Conspired and Agreed with One or More Access Stimulation LECS to Force AT&T and Other IXCs to Incur Unjust, Unreasonable, and Unnecessary Transport Costs.

94. As explained above (*see supra* paragraphs 7, 28), INS was expressly created to *lower* the costs of transporting traffic to remote Iowa exchanges. Because the traffic volumes between any single LEC and any IXC were traditionally very small in those remote exchanges, it did not make economic sense for IXCs and these remote and small LECs to directly connect with each other. INS was created to address those cost concerns; by operating a fiber ring around Iowa, it should transport long distance traffic to the remote LECs at lower costs to the IXCs and their customers.

95. However, when it comes to transporting large volumes of traffic associated with access stimulation schemes, the use of INS no longer results in lower costs to IXCs. To the contrary, the traffic to be transported to access-stimulating LECs in Iowa consists of such high volumes that paying INS to transport the traffic *increases* costs to IXCs, and, in turn, to long distance consumers.

96. About 80 percent of the minutes of use handled by INS are associated with access stimulated traffic, and most of that access stimulated traffic is associated with competitive LECs. Indeed, one competitive LEC in Iowa, Great Lakes Communications Corp. ("Great Lakes") handles such large volumes of traffic that, in terms of traffic volumes, it is the largest LEC in Iowa. Great Lakes handles *9 times* more traffic in Iowa than Qwest/Century Link, which has traditionally been the largest local carrier in Iowa.

97. INS's own Complaint alleges that it has an agreement with Great Lakes, the largest access stimulating LEC in Iowa. (Compl. ¶ 86.) The agreement states that "calls to and from Great Lakes' facilities *will be* transmitted over the [INS] network." (*Id.* (emphasis added).) Thus, because of INS's practices and contracts, AT&T has no choice but to route traffic associated with Great Lakes to INS.

98. Under the FCC's 2011 access stimulation rules, the FCC intended to "significantly reduce" the amounts that long distance carriers would pay for access stimulated traffic associated with competitive LECs. *Connect America Fund Order*, ¶ 690. In particular, the costs associated with terminating these types of calls were supposed to be no higher than what it would cost if the calls were being handled by the lowest-priced "price cap" carrier in Iowa, which is Qwest/Century Link.

99. However, contrary to those rules, because of INS's CEA charges and INS's agreement with Great Lakes, AT&T is paying much more on access stimulation to Great Lakes and other such competitive LECs than it would if these calls were being handled by Qwest/Century Link.

100. Traditional incumbent LECs like Qwest/Century Link, as well as many other LECs, offer another method of transporting long distance traffic, called a "direct trunk" or "direct connect." Under a direct connect arrangement, the LEC's end office facilities are directly connected to the IXC's long distance network. As a consequence, the IXC does not pay for "tandem" related switched access services at all in a direct connect arrangement. Further, the direct connect arrangements are not generally priced on a per minute (or traffic sensitive) basis (like INS's CEA service). Rather, these direct trunks are priced on a flat fee basis, depending on the capacity of the facility that carries the traffic.

101. As a consequence, the use of a direct connect arrangement like those offered by Qwest/Century Link and other LECs, instead of INS's CEA service, would dramatically reduce AT&T's costs of routing traffic to competitive LECs like Great Lakes that are engaged in carrying access stimulated traffic.

102. AT&T estimates that, if a direct connect arrangement were established with Great Lakes, for example, the costs of that direct connect arrangement would be only about 10 percent of what AT&T is being billed by INS on traffic associated with Great Lakes.

103. AT&T's data show that from September 2013 through May 2014, INS has billed AT&T in excess of $11.5 million. Of that $11.5 million, $7.2 million is associated with Great Lakes' traffic, virtually all of which was for access stimulation. Accordingly, because INS and Great Lakes have required AT&T to use INS to route access stimulated traffic to Great Lakes,

AT&T is being billed several million dollars more in access services than is necessary or reasonable.

104. In sum, as to the access stimulated traffic to Iowa LECs, it is not necessary for calls to be routed via INS, through INS's tandem switch in Des Moines. Further, the per minute transport charges that INS assesses on access stimulated traffic are also unnecessary and inflate the costs to AT&T, compared to the direct connect arrangements that are offered by Qwest/Century Link and other LECs. Accordingly, the use of INS's services on access stimulated traffic has the effect of raising rather than lowering AT&T's costs.

105. Such increased costs are inconsistent with the FCC's directives when it approved INS's operations, and when it promulgated its access stimulation rules. Further, these increased costs for transport do not result in any benefits for AT&T or for customers. *See AT&T Corp. v. Alpine Commc'ns, LLC et al.*, 27 FCC Rcd. 11511, *11-12 (holding that it is unjust and unreasonable in violation of Section 201(b) to insist on transport arrangements that only increase customers' costs without offsetting benefits).

106. INS's agreement with Great Lakes and its practice of charging AT&T on access stimulated traffic, particularly to competitive LECs such as Great Lakes, are unjust and unreasonable under Section 201(b) of the Act. INS's unreasonable practices and agreements unfairly require AT&T to use INS in routing traffic to these LECs, increasing AT&T's costs, contrary to the FCC's purposes in authorizing INS to operate CEA service and in revising its rules for access stimulation.

B. INS' Agreement Is Unreasonable Because It Is Not The Exclusive Provider Of Transport Services to Iowa CLECs Such As Great Lakes.

107. INS has alleged that the "FCC has held it is INS' sole responsibility to provide all transport facilities between the LEC's network and the facilities of long distance telephone companies." (Compl. ¶ 87.)

108. No authority holds that INS is the only transport provider through which IXCs can connect to CLECs in Iowa. Indeed, no CEA provider has the right to be the exclusive transport provider for CLEC-IXC connections, which industry practices confirm. In Iowa, South Dakota, and Minnesota (each of which has CEA providers), CLECs often interconnect through Qwest or some other tandem switch provider – and not through the CEA provider. AT&T's review of the industry data reveals that in those states, Sprint, Level 3, Verizon Business, XO, Eschelon, Integra, Comcast and Charter (among others) are all CLECs that have established connections with IXCs via the Qwest tandem switches rather than the CEA provider in the state. If CLECs were required by law to connect through CEA providers, then all of these carriers' connections would be unlawful. That is plainly not the case. As such, INS cannot claim that it has been deemed the exclusive provider of transport services.

109. Moreover, any requirement that INS serve as the exclusive transport provider to route calls to CLECs in Iowa is antithetical to the purpose of the CEA arrangements, and more generally with the pro-competitive purposes of the Act, which was designed to open local markets to competition.

110. For these reasons, INS's assertion that it is the exclusive provider of services for CLECs that connect with INS unreasonably forces AT&T to use inefficient and costly routing arrangements, and AT&T thereby incurs unjust, unreasonable, and unnecessary transport costs.

INS's practice is an unjust and unreasonable one, in violation of Section 201(b) of the Act, 47 U.S.C. § 201(b).

COUNT I
(Violation of 47 U.S.C. § 201(b))

111. AT&T repeats and re-alleges each and every allegation contained in the foregoing paragraphs of its counterclaims as if set forth fully herein.

112. Section 201(b) of the Communications Act states that "[a]ll . . . practices . . . in connection with . . . communications service[] shall be just and reasonable[] and any . . . practice . . . that is unjust or unreasonable is declared to be unlawful." 47 U.S.C. § 201(b).

113. INS's bills to AT&T include charges for interstate and intrastate switched access services, ,which INS allegedly provided pursuant to its tariffs. Those rates exceed the prices that the FCC established in its *Connect America Fund Order* and its implementing rules, the Transitional Access Service Rules.

114. INS is subject to those FCC Rules and to the *Connect America Fund Order* because it is providing switched access services that are subject to those rules and the *Order*. Further, INS is, and has been regulated as a rate-of-return carrier. INS has made a factual representation that it is a rate-of-return carrier. INS has also filed tariffs under Section 61.38, which is the section of the FCC's rules that rate-of-return ILECs use to file tariffs. The FCC and courts have relied on INS's representations, and INS has benefitted from such reliance. INS has now taken a position directly contradictory to its prior factual representation, *i.e.*, INS asserted in its Complaint that it is not a rate-of-return carrier. However, INS is estopped from doing so.

115. In the alternative, INS is subject to the Transitional Access Service Rules because it is a CLEC. *See* 47 C.F.R. § 51.911. Under Sections 51.903 and 51.5, INS must be a CLEC if

it is not an ILEC, because an entity providing exchange access, as INS is, must be either a CLEC or an ILEC. 47 C.F.R. §§ 51.5, 51.903.

116. In violation of the FCC's rules, INS raised its interstate switched access rates above the cap established by the FCC. Further, INS failed to reduce its intrastate switched access services as required by the FCC's rules.

117. INS's failure to charge the rates required by the FCC's rules is unjust and unreasonable, and is an unjust and unreasonable practices in violation of Section 201(b) of the Communications Act, 47 U.S.C. § 201(b).

118. INS's charges to AT&T pursuant to its unlawful tariffs are unjust and unreasonable in violation of Section 201(b) of the Communications Act, 47 U.S.C. § 201(b).

119. AT&T has been damaged by INS's violations of Section 201(b) of the Communications Act, and AT&T prays for damages in an amount to be determined at trial, interest, attorneys' fees, court costs, declaratory relief, injunctive relief, and an such other relief as this Court may deem just and reasonable.

COUNT II
(Violation of 47 U.S.C. § 203)

120. AT&T repeats and re-alleges each and every allegation contained in the foregoing paragraphs of its counterclaims as if set forth fully herein.

121. Section 203 of the Communications Act provides, among other things, that "[n]o carrier . . . shall engage or participate in such communication unless schedules have been filed and published in accordance with the provisions of this Act and the regulations made thereunder." 47 U.S.C. § 203(c).

122. Under this provision of the Act and the FCC's rules, carriers may not collect tariffed charges for regulated services unless and until they (1) have a valid and lawful tariff for those services and (2) provided the services pursuant to the terms and conditions of such a tariff.

123. INS's tariffs were not lawfully filed, and do not comply with, the regulations of the FCC, including the FCC's Transitional Access Service Pricing Rules.

124. INS's tariffs are therefore not valid or lawful, and should not have been filed.

125. INS's tariffs did not become effective or lawful, since they contained rates and conditions that violate the FCC's rules.

126. By filing tariffs with rates that violate the FCC's rules, INS has violated Section 203 of the Act, 47 U.S.C § 203.

127. By attempting to charge AT&T for regulated communications services, without a valid and lawful tariff, INS has violated Section 203 of the Act, 47 U.S.C. § 203.

128. AT&T has been damaged by INS's violations of Section 203 of the Communications Act, and AT&T prays for damages in an amount to be determined at trial, interest, attorneys' fees, court costs, declaratory relief, injunctive relief, and an such other relief as this Court may deem just and reasonable.

COUNT III
(Violation of 47 U.S.C. § 201(b))

129. AT&T repeats and re-alleges each and every allegation contained in the foregoing paragraphs of its counterclaims as if set forth fully herein.

130. Section 201(b) of the Communications Act states that "[a]ll . . . practices . . . in connection with . . . communications service[] shall be just and reasonable[] and any . . . practice . . . that is unjust or unreasonable is declared to be unlawful." 47 U.S.C. § 201(b).

131. INS's bills to AT&T include charges for interstate switched access services pursuant to its tariffed rates. If INS is determined not to be a LEC, then it is not authorized to file a tariff for the provision of switched access services. Nor does INS have an express contract with AT&T to provide switched access services. Thus, if INS is not a LEC, then it has no basis upon which to provide switched access service, and has no basis for recovery of the charges it has billed AT&T for providing switched access service.

132. INS's charges to AT&T pursuant to its unlawful tariffs are unjust and unreasonable in violation of Section 201(b) of the Communications Act, 47 U.S.C. § 201(b).

133. AT&T has been damaged by INS's violations of Section 201(b) of the Communications Act, and AT&T prays for damages in an amount to be determined at trial, interest, attorneys' fees, court costs, declaratory relief, injunctive relief, and an such other relief as this Court may deem just and reasonable.

COUNT IV
(Violation of 47 U.S.C. § 201(b))

134. AT&T repeats and re-alleges each and every allegation contained in the foregoing paragraphs of its counterclaims as if set forth fully herein.

135. Section 201(b) of the Communications Act states that "[a]ll . . . practices . . . in connection with . . . communications service[] shall be just and reasonable[] and any . . . practice . . . that is unjust or unreasonable is declared to be unlawful." 47 U.S.C. § 201(b).

136. INS has conspired or agreed with access stimulating LECs to force AT&T to use inefficient routing to transport long distance traffic to remote Iowa LECs through INS. For example, INS has an agreement with Great Lakes that requires calls to and from Great Lakes' facilities to be transmitted over INS's network.

137. INS's practice has forced AT&T to incur unjust, unreasonable, and unnecessary costs. As a result of access stimulation schemes, large volumes of traffic are routed to LECs serving remote exchanges, which tremendously increases AT&T's costs. If AT&T were permitted to use other routes to carry the traffic, including "direct connections," then its costs would be dramatically lower. This result is inconsistent with the *Connect America Fund Order*, which was expressly designed to lower costs to IXCs and their paying customers. It is also inconsistent with the FCC's orders authorizing INS to provide CEA services, which the FCC found were to lower costs of transporting traffic.

138. The increased costs for transport as a result of the unreasonable agreements between INS and access stimulating LECs, including Great Lakes, do not result in any benefits for AT&T or its ordinary long distance customers.

139. AT&T has been damaged by INS's violations of Section 201(b) of the Communications Act, and AT&T prays for damages in an amount to be determined at trial, interest, attorneys' fees, court costs, declaratory relief, injunctive relief, and an such other relief as this Court may deem just and reasonable.

COUNT V
(Declaratory Ruling)

140. AT&T repeats and re-alleges each and every allegation contained in the foregoing paragraphs of its counterclaims as if set forth fully herein.

141. The tariffs filed by INS, and pursuant to which INS rendered bills to AT&T, contain rates for switched access charges in violation of the price caps established by *Connect America Fund.* The tariff therefore violates the *Connect America Fund Order* and the FCC's implementing rules.

142. AT&T is entitled to judgment under 28 U.S.C. § 2201(a) declaring that: (i) INS is subject to the *Connect America Fund Order* and the FCC's implementing rules; (ii) INS's tariffed rates exceed the price caps established in the *Connect America Fund Order* and the FCC's implementing rules; (iii) AT&T is not obligated to pay the disputed interstate charges that appear on the bills rendered by INS to AT&T.

COUNT VI
(Declaratory Ruling)

143. AT&T repeats and re-alleges each and every allegation contained in the foregoing paragraphs of its counterclaims as if set forth fully herein.

144. There is no authority holding that INS is the exclusive provider of transport services to CLECs in Iowa. Any such exclusive right would contravene the purposes of both the CEA arrangement and the Telecommunications Act, which was implemented to increase local competition. Moreover, standard industry practice demonstrates no such right exists; in various states in which CEA arrangements exist, multiple CLECs interconnect with a tandem switch provider other than the CEA provider.

145. AT&T is entitled to judgment under 28 U.S.C. § 2201(a) declaring that INS is not the exclusive provider of transport services to CLECs.

WHEREFORE, for the reasons stated above, AT&T respectfully requests that judgment be entered for AT&T on each and all of its claims, together with appropriate damages, declaratory relief, injunctive relief, reasonable costs and fees, including attorneys' fees and expert fees, and interest together with such other and further relief as this Court may deem just and equitable under the circumstances.

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JURY DEMAND

Defendant/Counter-Claimant AT&T Corp. hereby demands a trial by jury on all issues so triable.

Dated: August 4, 2014

DAY PITNEY LLP

By: _____
RICHARD H. BROWN

CERTIFICATION PURSUANT TO L. CIV. R. 11.2

I certify that, to the best of my knowledge, this matter is not the subject of any other action pending in any court or of any pending arbitration or administrative proceeding. I certify under penalty of perjury under the laws of the United States of America that the foregoing is truth and correct.

RICHARD H. BROWN

Dated: August 4, 2014